



October 11, 2023

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to drug and theft crimes (A.G. File No. 23-0017, Amendment #1).

Background

Misdemeanor Sentencing. There are three types of crimes: infractions, misdemeanors, and felonies. Misdemeanors are more severe crimes than infractions but less severe than felonies and include crimes such as assault and public drunkenness. People convicted of misdemeanors can be sentenced to county jail, supervision in the community by a county probation officer (known as county community supervision), a fine, or some combination of the three. Misdemeanor crimes typically carry maximum punishments of six months or one year in county jail.

Felony Sentencing. A felony is the most severe type of crime. State law defines some felonies as “violent” or “serious,” or both. Examples of felonies defined as violent and serious include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies—such as distributing (including selling or giving away) certain illegal drugs (like heroin) to minors—are defined only as serious. Felonies that are not defined as violent or serious include human trafficking of adults and distributing illegal drugs to adults. People convicted of felonies can be sentenced to one of the following:

- ***County Jail and/or Community Supervision.*** People who have no current or past convictions for serious, violent, or sex crimes are typically sentenced to county jail or county community supervision, or both.
- ***State Prison.*** People whose current or past convictions include serious, violent, or sex crimes can be sentenced to state prison. In addition, for certain crimes people can be sentenced to prison even if they have no current or prior convictions for serious, violent, or sex crimes.

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One such crime is the possession of certain illegal drugs (such as heroin) while armed with a firearm.

The sentence lengths for people convicted of felonies vary based on the severity of the crime. For example, distribution of fentanyl can be punished by up to five years served at the county level or in state prison. In contrast, murder is typically punishable by a prison sentence of life with the possibility of parole, meaning people convicted of murder are generally not released until the Board of Parole Hearings determines they do not represent a threat to public safety. In addition, state law includes various enhancements that can increase people's sentences depending on the circumstances of their crimes or their criminal histories. For example, a person convicted of distributing fentanyl while armed with a firearm can receive an additional term of up to five years.

Post-Release Supervision. People released from state prison are generally required to be supervised in the community for a period of time after release, typically less than three years. People with current serious or violent convictions are supervised by state parole agents. The remaining people released from prison are generally supervised in the community by county probation officers—a type of county community supervision referred to as Post Release Community Supervision (PRCS). People released from county jail after completing their sentence are not required to be supervised in the community.

Proposition 47. In November 2014, voters approved Proposition 47, which reduced penalties for certain drug and theft-related crimes. For example, prior to Proposition 47, possession of illegal drugs for personal use and shoplifting (stealing property worth \$950 or less from a commercial establishment) could be punished as felonies. Under Proposition 47, these crimes are generally punished as misdemeanors. Because Proposition 47 reduced the number of crimes that can be punished as felonies, it reduced the number of people that could be sentenced to state prison. Proposition 47 requires that the estimated annual savings to the state resulting from the proposition's sentencing changes be spent on mental health and substance use services, truancy and dropout prevention, and victim services. Last year, the estimated state savings was about \$113 million.

Proposal

This measure amends state law to (1) create a new court process for certain drug possession crimes, (2) require a warning of future criminal liability for people convicted of drug distribution, (3) increase penalties for certain drug crimes, and (4) increase penalties for certain theft crimes. Some of these changes would undo certain reductions in punishment enacted by Proposition 47. We describe the measure's major provisions in greater detail below.

Creates New Court Process for Certain Drug Possession Crimes. Under current law, the possession for personal use of illegal drugs is generally a misdemeanor. This measure classifies possession of illegal drugs in certain cases as "treatment-mandated felonies" with specific requirements on how these cases are handled in the criminal justice system. Specifically, people with two or more prior convictions for various drug crimes (such as drug possession or distribution) who are found to be in possession of certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) could be charged with a treatment-mandated felony, rather than a misdemeanor. After agreeing not to contest the charges against them, such people would generally be referred to treatment based on an evaluation of their substance use and mental health treatment needs. Those who successfully complete treatment would have their charges dismissed. Those who are not successful in treatment could ultimately be required to serve up to three years in state prison.

Requires Warning of Future Criminal Liability for People Convicted of Drug Distribution.

The measure requires courts to warn people convicted of distributing certain illegal drugs (such as fentanyl, heroin, cocaine, and methamphetamine) that illegal drugs can be deadly. Moreover, the warning to these people shall specify that if, in the future, they provide illegal drugs to someone who dies as a result, they could be charged with murder.

Increases Penalties for Certain Drug Crimes. The measure increases penalties for certain drug crimes by increasing sentence lengths and/or shifting the sentence from the county level to state prison. For example, under current law, possession of certain drugs (such as cocaine, heroin, and methamphetamine) for personal use while being armed with a loaded firearm is a felony punishable by up to four years in prison. The measure adds fentanyl to the set of drugs to which this felony applies, thereby increasing the sentences for people convicted of this crime for fentanyl from up to one year in jail in most cases to up to four years in prison.

In addition, under current law, people who sell large quantities of certain drugs (such as cocaine, heroin, and methamphetamine) can receive sentence enhancements based on the weight of drugs sold. For example, someone who sells more than four but less than ten kilograms of cocaine can receive an enhancement of an additional five years at the county level or in state prison, depending on criminal history. Longer enhancement terms can be added for people who sell higher weights of cocaine. The measure requires that people who receive these enhancements serve their entire sentence in prison, regardless of their criminal history.

Increases Penalties for Certain Theft Crimes. The measure increases penalties for certain theft crimes primarily by allowing misdemeanor theft crimes to be charged as felonies in certain cases and creating enhancements for certain felony theft crimes. For example, the measure changes state law to make theft of money or property worth \$950 or less punishable as a felony for people who have two or more prior convictions for certain theft-related crimes (such as shoplifting, burglary, or carjacking). Under the measure, such people could receive sentences of up to three years in jail or prison depending on their criminal history rather than up to six months in jail as is generally the case under current law. In addition, the measure creates sentence enhancements for people convicted of felonies in which the amount of property that was stolen or damaged is over \$50,000, with longer enhancement terms as the dollar amounts increase. For example, if the affected property is worth more than \$50,000 but not more than \$200,000, a year would be added to the person's sentence. If the property is worth more than \$200,000 but not more than \$1,000,000, then two years would be added.

Fiscal Effects

This measure would have a number of fiscal effects on the state and local governments. The size of these effects would depend on several key factors. In particular, the fiscal effects would depend on how certain provisions in the measure are implemented, such as how local prosecutors choose to charge people arrested for the crimes affected by the measure and how that differs from current practices. We note that there are limited data available on current practices. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to significant uncertainty.

State Criminal Justice System Impacts. The measure would increase the state prison population in two primary ways. First, the measure would require some people who currently serve their

sentences at the county level to instead serve their sentences in prison. For example, people who receive existing enhancements for distributing large quantities of drugs would be required to serve their sentence in prison. Second, some people who currently serve their sentences in prison would receive longer prison sentences under the measure. For example, people sentenced to prison for felonies involving high dollar amounts of theft or damage would receive longer prison sentences due to the measure's new sentence enhancements. The measure would also increase the state parole population to the extent it causes people who, under current law, receive convictions for nonserious, nonviolent felonies—such as drug distribution—to instead receive convictions for violent felonies, such as murder. (As discussed above, the measure requires courts to warn people convicted of distributing certain drugs that they could be charged with murder if they continue to distribute drugs and someone dies as a result. In addition, people convicted of a violent felony, such as murder, are placed on parole after being released from prison.) In total, we estimate that the measure could increase the prison and parole population by thousands of people, resulting in increased state costs that could reach the hundreds of millions of dollars annually. However, the actual impact is highly uncertain and would depend on various factors, such as how these people are housed in the prison system.

The measure would also increase state court costs. For example, by allowing some crimes—such as shoplifting under certain circumstances—to be punished as felonies instead of misdemeanors, this measure would increase the number of felony filings and reduce the number of misdemeanor filings in state courts. As a result, workload for the courts would increase as felonies take more time to adjudicate than misdemeanors. In addition, drug possession cases handled through the measure's treatment-mandated felony process would require more court time and resources. We estimate that the resulting increase in state court costs could reach into the low tens of millions of dollars annually, depending on the actual number of people affected by the measure and how the courts process their cases.

In total, we estimate that the measure would increase state criminal justice system costs, potentially in the hundreds of millions of dollars annually. However, because this measure would undo certain reductions in punishment enacted by Proposition 47, this measure would reduce the state savings attributable to Proposition 47. Accordingly, the state criminal justice system costs resulting from this measure could be partially offset by a reduction in the amount of Proposition 47 savings spent on mental health and substance use services, truancy and dropout prevention, and victim services. However, the extent to which this occurs would depend on how the measure affects the estimate of the state savings attributable to Proposition 47.

Local Criminal Justice System Impacts. The measure would have various effects on the number of people in county jail and under county community supervision. As discussed above, components of the measure that would require people to serve their sentences in state prison instead of at the county level would reduce the number of people in jail and under county community supervision. However, other components of the measure—such as those that would allow certain lower-level theft crimes to be punished as felonies rather than misdemeanors—would cause people to spend a longer time in jail and/or under county community supervision than they otherwise would. In addition, because the measure would increase the number of people sentenced to prison, it would also increase the number of people released from prison to PRCS. On net, we estimate that the county jail and supervision population could increase by thousands of people annually. We estimate that the increased costs from the growth in the county correctional population, partially offset by the decrease

in costs from people being shifted from the county level to state prison, would result in a net increase in county correctional costs, potentially in the low tens of millions annually.

The measure would increase local court-related workload. This is because the expected increase in felony filings discussed above would increase workload for local prosecutors and public defenders. In addition, various county entities—such as probation or behavioral health departments—could experience an increase in workload associated with handling cases through the treatment-mandated felony process. We estimate that the resulting net increase in local court-related costs could be in the tens of millions annually, depending on the actual number of people affected by the measure and how it is implemented.

In total, we estimate that the measure would increase local criminal justice system costs, potentially in the tens of millions of dollars annually. In addition, the above impacts on the estimated state savings from Proposition 47 would result in less funding being available to local governments for mental health and substance use services, truancy and dropout prevention, and victim services. However, the extent to which this occurs would depend on how the measure affects the estimate of the state savings attributable to Proposition 47.

Other Fiscal Impacts. There could be various other fiscal effects on state and local governments due to the measure. For example, if the measure's increase in penalties reduces crime, some criminal justice system costs could be avoided. The extent to which these or other effects would occur is unknown.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Increased state criminal justice system costs potentially in the hundreds of millions of dollars annually, primarily due to an increase in the state prison population. Some of these costs could be offset by reductions in state spending on local mental health and substance use services, truancy and dropout prevention, and victim services due to requirements in current law.
- Increased local criminal justice system costs potentially in the tens of millions of dollars annually, primarily due to increased court-related workload and a net increase in the number of people in county jail and under county community supervision.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance