

May 12, 2010

Hon. Nathan Fletcher
Assembly Member, 75th District
Room 2111, State Capitol
Sacramento, California 95814

Dear Assembly Member Fletcher:

Another Member of the Legislature requested that we do a fiscal analysis of your AB 1844, as amended on April 28, 2010. As is our standard practice, we are also sharing our response with you as the author of the bill.

Background

Sentencing Provisions. In California, the term sex offense encompasses a broad range of crimes of a sexual nature. Some crimes are classified as misdemeanor crimes, which are generally less serious and carry a maximum punishment of imprisonment in county jail. Others are classified as felonies, which may result in a state prison sentence. Under certain provisions in the state Penal Code, some sex-related felonies are defined as “violent felonies” (such as certain types of rape). Offenders convicted of violent sex crimes generally may be sentenced to one of three prison terms. For instance, rape through the use of force is punishable by a term of three, six, or eight years in state prison. However, depending upon the offenders’ prior convictions or the circumstances surrounding the crime, certain offenders may receive longer sentences. For example, under the state’s so-called “one-strike” law, certain sex offenders, including some first-time offenders, convicted of specified violent sex crimes could receive a prison sentence of 15 or 25 years to life. Moreover, certain other provisions of state law provide for penalties of 15 years to life for specified violent sex crimes if the victim is under age 14 and younger than the offender by at least seven years (a circumstance referred to in the Penal Code as “aggravated sexual assault of a child”).

Registration and Other Requirements. Under existing state law, upon their release to the community, most offenders convicted of felony or misdemeanor sex crimes are required to register as sex offenders with the local law enforcement agency where they reside for the remainder of their lives. (Currently, there are about 90,000 registered sex offenders in California.) Existing law also prohibits registered sex offenders from living within 2,000 feet (or about two-fifths of a mile) of a school or park, as well as requires that felony sex offender registrants who have been sent to prison be monitored by

Global Positioning System (GPS) devices while on parole and for the remainder of their lives.

Major Provisions of AB 1844

This bill (1) increases penalties for specified violent sex offenses, (2) increases penalties and broadens the application of the one-strike law, (3) establishes a new misdemeanor crime for certain registered sex offenders who enter a park where children regularly gather, and (4) increases parole terms for certain sex offenders.

Increased Penalties for Specified Violent Sex Offenses. This bill increases the penalties for certain violent sex offenses if the victim is a minor, including for these crimes: rape, rape in concert, sodomy, oral copulation, lewd acts on a child under age 14, and sexual penetration. For example, rape with the use of force on a minor under the age of 14 would be punishable under current law by a term in state prison of three, six, or eight years, but under AB 1844 would be subject to a term of 6, 12, or 16 years. The measure also enhances the punishment when the victim is a minor between the ages of 14 and 17.

In certain cases, an offender might receive a longer sentence than under these provisions of AB 1844 if they were prosecuted under other existing sentence laws, such as under the one-strike law. In such cases, this bill specifies that prosecution can occur under the existing law that provides for a longer prison term. For instance, under certain circumstances, an offender could still receive a sentence of 15 years to life for aggravated sexual assault on a child under age 14 as provided under existing law, instead of the term of 6, 12, or 16 years specified in AB 1844.

Increased Penalties and Broadened Application of One-Strike Law. This bill increases certain penalties under the current one-strike law if the victim of the crime is a minor. For example, under certain circumstances, an offender could be sentenced under AB 1844 to life without the possibility of parole if the victim was a minor. (The specific circumstances that would be necessary for this sentence to apply differ depending on the age of the minor.)

In addition, the bill broadens the circumstances under which offenders could be prosecuted under the state's one-strike law. For example, under current law, an offender who (1) committed one of the specified violent sex crimes on a child under the age of 14 while (2) inflicting physical injuries on the victim that resulted in a "traumatic condition" in some circumstances might not be subject to the state's existing one-strike law. (The state Penal Code defines traumatic condition as "a wound or external or internal injury, whether of a minor or serious nature.") Under AB 1844, that offense would now be punishable by life without the possibility of parole as a one-strike offense.

New Misdemeanor Crime for Sex Offenders Entering Parks. This bill makes it a misdemeanor crime for offenders registered for a felony sex crime to enter any park where

children regularly gather without written permission from their parole agent or the chief administrative official of the park. Punishment for violation of this law would vary depending on whether the offender had previously been convicted of this particular crime. The maximum punishment for third—and all subsequent—convictions would be six months in county jail and a fine of not more than \$500. The bill requires all offenders convicted three or more times of this new crime to spend a minimum of 90 days in county jail.

Increased Parole Terms. This bill increases the length of parole supervision for certain offenders released from prison. For example, under current law, offenders convicted of certain violent sex crimes may be placed under parole supervision after release from prison for a period of up to five years. Under this bill, such offenders would be placed on parole for up to ten years. In addition, the bill requires that certain sex offenders be placed on parole for the remainder of their lives, such as offenders convicted of certain violent sex crimes where the victim is under the age of 14.

Fiscal Effects

In summary, we find that AB 1844 would likely result in increased criminal justice system costs amounting to at least a few tens of millions of dollars annually within the next decade. The costs collectively would total at least in the low hundreds of millions of dollars annually after several decades. These would likely include increased costs for state prison and parole operations and, potentially, construction, as well as added state court costs for additional criminal trials. In addition, counties could face relatively minor increases in costs for county jail operations and probation supervision.

Several factors complicated our efforts to estimate the fiscal impact of AB 1844. First, in order to provide an estimate that is as accurate as possible of the fiscal impact of the bill's major provisions, we requested specific data regarding the state prison and parole populations from the California Department of Corrections and Rehabilitation (CDCR). However, at the time this analysis was prepared, the department has not provided the data we requested. We also note that the fiscal impact of certain provisions of the bill partially depends on unknown variables that are difficult to ascertain (such as how often district attorneys would choose to prosecute crimes under the provisions of AB 1844 as opposed to under existing statutes that could also apply). Similarly, our fiscal analysis does not take into account the possibility that the measure could deter future criminal activity and thereby reduce the cost of the provisions of AB 1844. The long-term nature of the fiscal impacts of some of the provisions of AB 1844 further means that our forecast may not fully account for significant potential changes in prison operating costs and in the size of the population of sex offenders that could occur over time. In view of the above, the major fiscal effects of this bill discussed below are subject to significant uncertainty.

We discuss the fiscal implications of each major component of AB 1844 below.

Significant Costs for Increased Criminal Penalties. The increased penalties authorized under this bill for certain violent sex offenses would, upon full implementation in about ten years, increase state prison operating costs by at least a few tens of millions of dollars annually. (This estimate excludes the additional costs for offenders charged under the one-strike law. We discuss these costs separately below.) These additional costs would result because, under AB 1844, certain offenders would remain in prison for longer periods of time than under current law, resulting in a larger prison population over time. It is also possible that this bill could eventually result in additional capital outlay costs to accommodate the increase in the inmate population resulting from this measure.

Unknown Costs for Changes to One-Strike Law. The provisions of the bill that expand the application and the penalties for the one-strike law would also increase state criminal justice system costs. However, we are unable to estimate the magnitude of these costs for three main reasons.

First, we are unable to determine whether many of the offenders subject to AB 1844 would, as a practical matter, actually stay in prison for a longer period than under the existing law. It is possible that many of those sentenced to 15 or 25 years to life under the existing one-strike law might never be released by parole authorities. In such cases, it would make little difference if these types of offenders instead received the sentence in the future under AB 1844 of life without the possibility of parole. We lacked the data that would be needed to resolve this issue since most offenders sentenced under the existing one-strike law have yet to reach their minimum parole eligibility date. Moreover, we did not receive data from CDCR that we requested that would have shed light on how many one-strikers that are eligible for parole have in fact been paroled.

Second, we are unable to estimate how many new crimes would be eligible to be charged under the proposed amendments to the one-strike law. This is because we do not have access to case files that would allow us to determine how many cases might qualify for the higher criminal penalties that would be imposed under AB 1844. Our preliminary analysis is that the number of offenders affected by the measure could be substantial. Certain provisions of AB 1844, such as the inclusion of a new circumstance regarding the infliction of a traumatic condition on a victim under age 14, would appear to be broad enough to affect a significant number of offenders.

Finally, it is unknown at this time whether the new penalty of life without parole would result in more criminal cases in the court system going to trial. Significant increases in potential criminal penalties, such as this one, do have the potential to prompt more offenders to bring their cases to trial and to reduce the number of cases that are settled before trial. Thus, this measure could increase state trial court costs to an unknown extent.

Minor Fiscal Effects Related to New Misdemeanor Crime. The new misdemeanor crime authorized in this bill for certain sex offenders who enter a park without permission would likely result in increased costs for county jail and probation departments, as well as for state trial courts. However, we estimate that these costs would be minor for several reasons. First, county jails under court-ordered or self-imposed population limits may not incur increased costs to the extent that they release other offenders early to “free up” jail space for new offenders convicted of this crime. In addition, we assume that the number of sex registrants convicted of this crime would likely be small. This new crime may be difficult for law enforcement authorities to detect, unless the registrant is under community supervision. Moreover, it is likely that some felony sex offender registrants are already restricted from entering a park as a condition of their parole or probation supervision. We also note that any increase in these costs would be partially offset by the fines collected from offenders convicted of this new offense. In view of the above, we estimate that the net increase in state and local costs related to the new misdemeanor crime is unlikely to be significant on a statewide basis.

Significant Costs for Longer Parole Terms. The provisions of the bill requiring longer parole terms for certain offenders could increase state costs to monitor more offenders on parole using GPS technology. The lengthening of parole terms could also result in additional parole revocations, which in turn could increase state prison operating costs. These costs would likely not begin to accrue until at least several years after the enactment of the bill. Initially, they would probably range in the tens of millions of dollars annually. However, in a few decades, upon the full implementation of AB 1844, the combination of all of these increased parole-related costs could eventually total at least in the low hundreds of millions of dollars annually. It is also possible that the bill could result in additional capital outlay costs to accommodate the increase in the inmate population due to increased parole revocations.

If you have any questions, please feel free to contact Paul Golaszewski at 319-8341.

Sincerely,

Mac Taylor
Legislative Analyst