

February 4, 2008

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Krystal Paris  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "Victims' Bill of Rights Act of 2008: Marsy's Law," Amdt. #1-NS (A.G. File No. 07-0100). This measure amends the State Constitution and various statutes relating to (1) the legal rights of crime victims and restitution, (2) restrictions on the early release of inmates, and (3) the granting and revocation of parole. These provisions are discussed in more detail below.

### **Expansion of the Legal Rights of Crime Victims and Restitution**

**Background.** In June 1982, California voters approved Proposition 8, known as the "Victims' Bill of Rights." This initiative amended the Constitution and various statutes to, among other changes, grant crime victims the right to be notified in advance, attend, and state their views at sentencing and parole hearings. Other separately enacted statutes have created other rights for crime victims, including the opportunity for judicial orders to protect a victim from harassment by a criminal defendant.

Proposition 8 established the right of crime victims to obtain restitution from any person who committed the crime that caused them to suffer a loss. Restitution involves, for example, replacement of stolen or damaged property, or reimbursement of costs that the victim incurred as a result of the crime. A court is required under current state law to order full restitution unless it finds compelling and extraordinary reasons not to do so. Under certain court procedures, a restitution order can be enforced by a victim in the same manner as a civil judgment. Proposition 8 also established a right to "safe, secure and peaceful" schools for students and staff of primary, elementary, junior high, and senior high schools.

**Provisions Relating to Restitution.** This measure requires that restitution be ordered from offenders who have been convicted, in every case in which a victim suffers a loss,

without exception. The measure also requires that any funds collected by a court or law enforcement agencies, from a person ordered to pay restitution would go to pay that restitution first, in effect prioritizing those payments over other fines and obligations an offender may legally owe.

***Notification and Participation of Victims in Criminal Justice Proceedings.*** As noted above, Proposition 8 established a legal right for crime victims to be notified of, attend, and state their views in sentencing and parole hearings. This measure would expand these legal rights to include various types of criminal proceedings, including the release from custody of an offender after their arrest. Also, law enforcement and criminal prosecution agencies would be required to provide victims with a "Marsy's Rights" card detailing the victim's rights and resources or a "Victims Survival and Resource Guide" containing similar information.

***Other Expansions of Victims' Legal Rights.*** This measure expands the legal rights of crime victims in various other ways, including the following:

- Crime victims and their families would now have a state constitutional right to prevent the release of certain confidential information or records to criminal defendants, to protection from harm from individuals accused of committing crimes against them, to the return of property no longer needed as evidence in criminal proceedings, and to finality in criminal proceedings in which they are involved. Some of the constitutional legal rights for victims added by this measure now exist in statute.
- The Constitution would be changed to specify that the safety of a crime victim must be taken into consideration by judges in setting bail for offenders arrested for crimes.
- The measure would state that the right to safe schools includes community colleges, colleges, and universities.

### **Restrictions on Early Release of Inmates**

This measure would amend the Constitution to specify that criminal sentences imposed by the courts shall be carried out in compliance with the courts' sentencing orders and shall not be substantially diminished by early release policies to alleviate overcrowding in prison or jail facilities. The measure directs that sufficient funding be provided to house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

### **Changes Affecting the Granting and Revocation of Parole**

***Background.*** Before the California Department of Corrections and Rehabilitation releases an individual sentenced to life in prison with the possibility of parole the inmate

must go before the Board of Parole Hearings. The board also has authority to return to state prison for up to a year individuals who have been released on parole but who commit parole violations. In keeping with a federal court settlement, the state provides legal counsel to parolees facing revocation charges.

***Modified Procedures for Consideration of Parole.*** This initiative changes the procedures to be followed by the board when it considers the release of inmates with a life sentence from prison. Specifically:

- Inmates who were denied parole would generally have a longer time to wait, in some cases up to 15 years, before they would again have a parole consideration hearing.
- Crime victims would receive earlier notification in advance when inmates come before the board for parole consideration.
- In addition to having expanded opportunities to testify at such hearings, victims would also be able to bring additional family members and other representatives to testify at parole board hearings.

***Parole Revocation Procedures.*** This measure also makes changes to the board's parole revocation procedures for offenders paroled from prison after the enactment of this initiative. It places into state law longer deadlines for probable cause hearings and hearings on the revocation charges than are now required for parole revocation cases under a court settlement. The measure also specifies that legal counsel will be provided to parolees facing revocation charges on a case-by-case basis if the parolee is deemed indigent, their case is complex, or they are incapable of defending themselves because of a mental or educational incapacity. Under the current court settlement, all parolees must be afforded legal counsel.

## **Fiscal Effects**

***Potential Increase in State Prison and County Jail Costs.*** The proposed constitutional amendment in this measure that requires that criminal sentences imposed by the courts be carried out without being substantially reduced by early releases in order to address overcrowding could have a significant fiscal impact on both the state and counties. The effect of this provision would depend upon the circumstances related to early release and how this provision was interpreted by the courts.

The state does not now generally release inmates early from prison. Thus, under current law, the proposed constitutional amendment would probably have no fiscal effect on the state prison system.

This measure could have a significant fiscal effect in the future, however, in the event that the Legislature or the voters enacted such an early release program to address prison

overcrowding problems. Under such circumstances, this provision of the initiative could result in significant additional state prison costs in the hundreds of millions of dollars annually than would otherwise be the case.

Early releases of jail inmates now occur in a number of counties, primarily in response to population limits imposed on county jail facilities as a result of past federal court litigation over overcrowded conditions. Given these actions by the federal courts, it is not clear how, and to what extent, the enactment of such a state constitutional measure would affect jail operations and related expenditures in these counties. In other counties not subject to federal court-ordered population caps, the restrictions in this measure on early release of inmates could affect jail operations and related costs, depending upon the circumstances related to early release and how this provision was interpreted by the courts.

In general, where this provision of the Constitution was invoked, counties would probably respond by either (1) increasing the pretrial release of offenders, thereby making more room for sentenced offenders to serve their full terms in jail, or (2) expanding jail operations within new or existing facilities. Such expansions of jail operations could eventually increase county costs by the low hundreds of millions of dollars on a state-wide basis.

***State Savings From Parole Board Changes.*** The provisions of this measure that reduce the number of parole hearings received by inmates serving life terms would likely result in state savings amounting to millions of dollars annually. Additional tens of millions of dollars annually in savings could result from the provisions changing parole revocation procedures, such as by limiting when counsel was provided by the state. However, some of these changes related to parole revocations are likely to be subject to legal challenges. In addition, both of these sets of provisions could also ultimately increase state costs to the extent that they result in additional offenders being held in state prison.

***Other State and Local Government Fiscal Impacts.*** The changes to the restitution process contained in this measure could potentially have other impacts on a host of local and state programs. Currently, a number of different state and local agencies receive funding from the fines and penalties collected from criminal offenders. For example, counties' general funds, the Fish and Game Preservation Fund, the Traumatic Brain Injury Fund, and the Restitution Fund for crime victims receive revenues collected from offenders. Because this initiative mandates that all monies collected from the defendant first be applied to pay restitution orders directly to the victim, it is possible that their payments of fine and penalty revenues to various funds, including the Restitution Fund, could decline. This impact may be offset to the extent that certain provisions of this initiative, such as the requirement for additional financial disclosure of their assets, improve the overall collection of monies owed by criminal offenders.

Finally, this initiative may also generate some savings for state and local agencies to the extent that the provisions of this measure (1) increases the restitution collected by crime victims and (2) the victims collecting restitution therefore need less help from state and local government programs, such as social services and victim assistance programs.

The net fiscal impact of these factors on the state and local agencies is unknown.

### **Summary**

This measure would have the following major fiscal effects:

- Unknown potential increases in state prison and county jail operating costs due to provisions restricting early release of inmates. To the extent that any such costs were incurred, they could collectively amount to hundreds of millions of dollars annually.
- A potential net savings in the low tens of millions of dollars for the administration of parole reviews and revocations if the changes related to parole revocation procedures were not overturned by potential legal challenges.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance