



Senate Public Safety Committee
Honorable Loni Hancock, Chair

Assembly Public Safety Committee
Honorable Reginald B. Jones-Sawyer Sr., Chair

Informational Hearing: Proposed Initiative #1781

Criminal Sentences Juvenile Criminal Procedures and Sentencing

June 8, 2016
9:30 a.m.
State Capitol, Room 447
Sacramento, California 95814

**Informational Hearing: Proposed Initiative #1781
Criminal Sentences: Juvenile Criminal Procedures and Sentencing**

June 8, 2016, 9:30 a.m.
State Capitol, Room 447

Agenda

- I. Opening Remarks (9:30 a.m. – 9:45 a.m.)**
 - Hon. Reginald B. Jones-Sawyer Sr., Chair, Assembly Public Safety Committee
 - Hon. Loni Hancock, Chair, Senate Public Safety Committee
 - Other members of committees

- II. Initiative Overview and Fiscal Evaluation (9:45 a.m. – 10:15 a.m.)**
 - Drew Soderborg, Managing Principal Analyst, Criminal Justice, Legislative Analyst's Office

- III. Panel Discussion and Questions: Proponents (10:15 a.m. – 11:00 a.m.)**
 - Frankie Guzman, Attorney, National Center for Youth Law
 - Elizabeth Calvin, Senior Advocate, Human Rights Watch
 - Mary Butler, President-Elect, Chief Probation Officers of California

- IV. Panel Discussion and Questions: Opponents (11:00 a.m. – 11:45 a.m.)**
 - Larry D. Morse II, District Attorney, Merced County
 - Robert Mestman, Sr. Deputy District Attorney, Orange County
 - George Hofstetter, President, Association of Los Angeles Deputy Sheriffs
 - Marc Klaas, Victims Advocate

- V. Public Comment (11:45 a.m. – 12:00 p.m.)**

ELECTIONS CODE 9034

Election Code § 9034

Transmission of Copies of Initiative Measure to Legislature; Public Hearings

(a) The proponents of a proposed initiative measure shall submit a certification, signed under penalty of perjury, to the Secretary of State immediately upon the collection of 25 percent of the number of signatures needed to qualify the initiative measure for the ballot.

(b) Upon the receipt of the certification required by subdivision (a), the Secretary of State shall transmit copies of the initiative measure, together with the circulating title and summary as prepared by the Attorney General pursuant to Section 9004, to the Senate and the Assembly. Each house shall assign the initiative measure to its appropriate committees. The appropriate committees shall hold joint public hearings on the subject of the measure not later than 131 days before the date of the election at which the measure is to be voted upon.

(c) This section shall not be construed as authority for the Legislature to alter the initiative measure or prevent it from appearing on the ballot.

INITIATIVE TEXT AND VOTER INFORMATION GUIDE

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 445-4752
Facsimile: (916) 324-8835
E-Mail: Ashley.Johansson@doj.ca.gov

February 26, 2016

The Honorable Alex Padilla
Secretary of State
Office of the Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814

Attention: Ms. Katherine Montgomery
Elections Analyst

Dear Secretary Padilla:

Pursuant to Elections Code section 9004, you are hereby notified that on this day we sent our title and summary for the following proposed initiative to the proponent:

- 15-0121A1, "The Public Safety and Rehabilitation Act of 2016"

A copy of that title and summary and text of the proposed initiative is enclosed. Please contact me if you have questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Johansson".

ASHLEY JOHANSSON
Initiative Coordinator

For KAMALA D. HARRIS
Attorney General

cc: Harry Berezin, Proponent
Margaret Prinzing, Proponent

EMAIL RECEIVED

FEB 26 2016 6:24pm

**BY CALIFORNIA
SECRETARY OF STATE**

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**CRIMINAL SENTENCES. JUVENILE CRIMINAL PROCEEDINGS AND
SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

Allows parole consideration for persons convicted of nonviolent felonies upon completion of full prison term for primary offense, as defined. Authorizes Department of Corrections and Rehabilitation to award sentence credits for rehabilitation, good behavior, or educational achievements. Requires Department of Corrections and Rehabilitation to adopt regulations to implement new parole and sentence credit provisions and certify they enhance public safety.

Provides juvenile court judges shall make determination, upon prosecutor motion, whether juveniles age 14 and older should be prosecuted and sentenced as adults. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:

Net state savings that could range from the tens of millions of dollars to the low hundreds of millions of dollars annually primarily due to a reduction in the prison population from additional paroles granted and credits earned. Net county costs that could range from the millions to tens of millions of dollars annually, declining to a few million dollars after initial implementation of the measure. (15-0121.)

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

RECEIVED

JAN 26 2016

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: *Submission of Amendment to Statewide Initiative Measure –
The Justice and Rehabilitation Act, No. 15-0121*

Dear Ms. Johansson:

As you know, I am one of the proponents of the proposed statewide initiative, "The Justice and Rehabilitation Act," No. 15-0121. I am enclosing the following documents:

- The amended text of "The Justice and Rehabilitation Act," No. 15-0121;
- A red-line version showing the changes made in the amended text; and
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

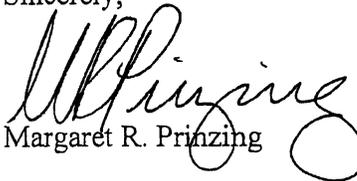
Please continue to direct all inquiries or correspondence relative to this proposed initiative as indicated below:

Ashley Johansson
Initiative Coordinator
Office of the Attorney General
January 25, 2016
Page 2

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Thank you for your time and attention to this matter.

Sincerely,



Margaret R. Prinzing

MRP:NL
Enclosures
(00266157)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

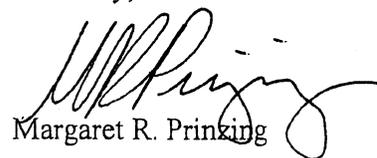
Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,


Margaret R. Prinking

Enclosures
(00266162)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,



Harry Berezin

Enclosures
(00266171)

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

This measure shall be known and may be cited as “The Public Safety and Rehabilitation Act of 2016.”

SEC. 2. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.
2. Save money by reducing wasteful spending on prisons.
3. Prevent federal courts from indiscriminately releasing prisoners.
4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

SEC. 3. Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole consideration: Any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

SEC. 4. Judicial Transfer Process.

Sections 602 and 707 of the Welfare and Institutions Code are hereby amended.

Section 602 of the Welfare and Institutions Code is amended to read:

602. (a) Except as provided in ~~subdivision (b)~~ Section 707, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based

solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

~~(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:~~

~~(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.~~

~~(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

~~(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.~~

~~(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.~~

~~(C) Forceible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.~~

~~(D) Forceible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.~~

~~(E) Forceible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.~~

~~(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a)(1) In any case in which a minor is alleged to be a person described in ~~subdivision (a) of Section 602 by reason of the violation, when he or she was 16 years of age or older, of any felony criminal statute, or ordinance except those listed in subdivision (b), or of an offense listed in subdivision (b) when he or she was 14 or 15 years of age, the District Attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. upon The motion of the petitioner must be made prior to the attachment of jeopardy. Upon such motion, the juvenile court shall cause order the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor, being considered for a determination of unfitness. The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.~~

(2) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below. If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no plea that may have been entered already shall constitute evidence at the hearing. ~~may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:~~

(A)(i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C)(i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.~~

~~(2)(A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:~~

~~(i)(I) The degree of criminal sophistication exhibited by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(ii)(I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(iii)(I) The minor's previous delinquent history.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous~~

delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

~~(iv)(I) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(v)(I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of the those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

(b) Subdivision (e) (a) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses when he or she was 14 or 15 years of age:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.
- (9) Kidnapping for ransom.
- (10) Kidnapping for purposes of robbery.
- (11) Kidnapping with bodily harm.
- (12) Attempted murder.
- (13) Assault with a firearm or destructive device.
- (14) Assault by any means of force likely to produce great bodily injury.
- (15) Discharge of a firearm into an inhabited or occupied building.
- (16) An offense described in Section 1203.09 of the Penal Code.
- (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.
- (18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.
- (19) A felony offense described in Section 136.1 or 137 of the Penal Code.
- (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.
- (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.
- (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- (23) Torture as described in Sections 206 and 206.1 of the Penal Code.
- (24) Aggravated mayhem, as described in Section 205 of the Penal Code.
- (25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:~~

~~(1)(A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2)(A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3)(A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

(4)(A) Success of previous attempts by the juvenile court to rehabilitate the minor.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(5)(A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

~~(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).~~

~~(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.~~

~~(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older:~~

~~(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

SEC. 5. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of Section 4 of this measure may be amended so long as such amendments are consistent with and further the intent of this Act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 7. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing credits and parole eligibility for state prisoners or adult court prosecution for juvenile defendants shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 8. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in any trial court, on appeal, or on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

LAO SUMMARY AND FISCAL ANALYSIS



February 11, 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional and statutory initiative related to parole consideration, credits, and the prosecution of juveniles in adult court (A.G. File No. 15-0121, Amendment No. 1).

BACKGROUND

Parole Consideration and Credits for Prison Inmates

Parole Consideration Hearings. Under indeterminate sentencing, prison inmates receive a sentence range, such as 25-years-to-life, and typically appear before the state Board of Parole Hearings (BPH) for a parole consideration hearing in order to be granted release from prison. Most inmates, however, receive determinate sentences. Under determinate sentencing, inmates receive fixed prison terms and do not need a parole consideration hearing to be released from prison. However, in certain circumstances, inmates serving determinate sentences are eligible for parole consideration hearings before they have served their entire sentence. For example, under current law, inmates who committed their crime before the age of 23 and receive a determinate sentence are eligible for parole consideration hearings after serving 15 years of their sentences. In addition, pursuant to a federal court order, there are other determinately sentenced inmates that receive parole consideration partway through their terms. This was one of several measures put in place to keep the prison population below a limit put in place by the court.

Credits. State law currently provides the California Department of Corrections and Rehabilitation (CDCR) with the authority to award credits to prison inmates that reduce the time that they must serve. The credits are provided for good behavior, or for participating in work, training, or education programs. Inmates can reduce their sentence by as much as one-half through these credits. However, state law restricts the amount of credits that certain inmates can earn. For example, the most inmates convicted of using a firearm while committing certain crimes can reduce their sentences with credits is 15 percent.

Juvenile Justice

Youths in Juvenile Delinquency Court. Individuals accused of committing crimes when they were under 18 years of age are generally tried in juvenile delinquency court rather than in adult criminal court. Juvenile court proceedings differ from adult court proceedings in various ways. For example, rather than sentencing a youth to a set term of incarceration, juvenile court judges determine the appropriate placement and treatment for the youth, based on such factors as the youth's offense, prior record, and criminal sophistication.

Counties are generally responsible for the youths placed by juvenile courts. These youth are typically allowed to remain with their families. However, some are placed outside of their home, such as in county-run camps or ranches. In addition, if the judge finds that the youth committed certain major crimes specified in statute (such as murder, robbery, and certain sex offenses), the judge can place the youth in a facility operated by the state Division of Juvenile Justice (DJJ). State law requires that counties pay a portion of the cost of housing such youths committed to DJJ by juvenile courts. Youths who are released from DJJ are generally supervised in the community by county probation officers. In total, about 52,000 youths were tried in juvenile delinquency court in 2014.

Youths in Adult Court. In certain circumstances, individuals accused of committing crimes when they were age 14 or older can be tried in adult criminal court and subject to adult sentences. (Youths accused of committing crimes before they were age 14 must have their cases heard in juvenile court.) Such cases can generally end up in adult criminal court in one of the three following ways:

- ***Fitness Hearing.*** A prosecutor can request a fitness hearing in which a juvenile court judge decides whether a youth should be transferred to adult court. For youths accused of committing crimes when they were age 14 or 15, the crime must be one of certain major crimes specified in statute (such as murder, robbery, or certain sex offenses). For youths accused of committing a crime when they were age 16 or 17, the prosecutor can seek this hearing for any crime, but typically will only do so for more serious crimes or for youths with a significant criminal history.
- ***Direct Filing.*** If a youth has a significant criminal history and/or is accused of certain crimes specified in statute (such as murder), a prosecutor can "direct file" charges in adult criminal court without needing to seek a fitness hearing. There are more circumstances for which youths accused of committing crimes when they were age 16 or 17 can be subject to direct filings.
- ***Mandatory Filing.*** If a youth is accused of committing murder or certain sex offenses with specified aggravating special circumstances (such as also being accused of torturing the victim), he or she must be tried in adult court.

Relatively few youths are tried in adult criminal court each year. For example, only about 400 youths were tried in adult criminal court in 2014.

Youths who are convicted in adult criminal court when they are under 18 years of age are typically held in DJJ for the first portion of their sentences. When these youth turn age 18, they are generally transferred to state prison. However, if their sentence is short enough that they are able to complete their terms before turning age 21, they serve their entire sentences in DJJ. The state is solely responsible for the cost of housing youths in DJJ who were convicted in adult criminal court.

After completing their sentences, youth convicted in adult court are generally supervised in the community by state parole agents whether they are released from DJJ or state prison.

PROPOSAL

This measure makes changes to the State Constitution to increase the number of inmates eligible for parole consideration and provide CDCR with additional authority to award credits to inmates. The measure also makes statutory changes to require that youths have a hearing in juvenile delinquency court before they can be transferred to adult criminal court. We describe these provisions in greater detail below.

Parole Consideration for Non-Violent Offenders. The measure amends the State Constitution to specify that any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. The measure defines primary offense as the longest term imposed excluding any additional terms that are added to an offender's sentence. Such additional terms include: (1) the sentences for the lesser crimes the inmate is convicted of in certain cases where the inmate is convicted of multiple crimes and (2) sentencing enhancements (such as the additional time an inmate must serve for using a firearm while committing a crime). As a result, these offenders could be released on an expedited basis, after serving the term for their primary offense. In addition, the measure authorizes CDCR to adopt regulations to implement the above changes and requires the Secretary of CDCR to certify that they protect and enhance public safety.

Authority to Award Credits. The measure also amends the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and approved rehabilitative or educational achievements. As a result, CDCR could authorize credits beyond the current limits. In addition, the measure authorizes CDCR to adopt regulations to implement the above changes and requires the Secretary of CDCR to certify that they protect and enhance public safety.

Juvenile Transfer Hearings. The measure modifies statute regarding fitness hearings to require that all youths have a hearing in juvenile delinquency court before they can be transferred to adult criminal court. As a result, prosecutors would no longer be able to file charges directly in adult criminal court and no youths would have their cases heard in adult criminal court on a mandatory basis. In addition, the measure specifies that hearings to transfer youths to adult criminal court could only be sought for (1) youths accused of committing certain major crimes specified in statute (such as murder, robbery, and certain sex offenses) when they were age 14 or 15 and (2) youths accused of committing a felony when they were 16 years of age or older. As a result, there may be fewer youth tried in adult court. These youth would likely be subject to shorter terms than would be the case if they were subject to adult sentences.

FISCAL EFFECTS

This measure would have various fiscal effects on the state and local governments. However, the magnitude of these effects would depend on how certain provisions in the measure are interpreted and implemented, such as the extent to which BPH grants parole and CDCR awards additional credits. As such, our estimates below encompass a relatively wide range.

Parole Consideration for Non-Violent Offenders

Net State Savings. To the extent that non-violent offenders serve shorter terms in prison due to the parole consideration provisions of the measure, it would reduce state costs as the size of the prison population would decline. However, these savings would be partially offset by a couple of factors. First, BPH would experience costs associated with considering inmates for parole. Second, under current law, indeterminate sentenced offenders and offenders with convictions for serious crimes are supervised by state parole agents following their release from prison. To the extent that this measure expedited the release of these offenders, the above prison savings would be slightly offset by increased parole costs for roughly a decade following the implementation of the measure. In total, we estimate that the net savings to the state from these factors would likely be in the tens of millions of dollars annually on an ongoing basis. We note that in the short term the net savings would likely be higher.

County Costs. Under current law, offenders whose current conviction is not violent or serious are supervised in the community by county probation officers following their release from prison. Accordingly, to the extent that this measure expedited the release of these offenders, it would temporarily increase county costs to supervise these individuals in the community. We estimate that these costs could range between the millions and tens of millions of dollars annually for a few years following the initial implementation of the measure.

Credits for Prison Inmates

Net State Savings. To the extent that CDCR decides to grant additional credits beyond those currently authorized, the size of the prison population would decline—resulting in a reduction in state correctional costs. Under current law, offenders convicted of serious or violent offenses are supervised by state parole agents following their release from prison. Accordingly, to the extent that the measure expedited the release of these offenders, the above prison savings would be slightly offset by increased parole costs for a period of years following the implementation of the measure. The precise fiscal effect would depend on how much average sentence lengths were reduced by CDCR. For example, if the department only granted a minor increase in credits, the net savings would be minimal. On the other hand, if the department granted sufficient credits to reduce average inmate sentences by a few months, the measure could eventually result in net state savings reaching into the low hundreds of millions of dollars annually.

County Costs. To the extent that the measure's changes to credits expedite the release of inmates from state prison who have not been convicted of serious or violent crimes, the measure would temporarily increase county costs to supervise these individuals in the community following their release. We estimate that these costs could range from minor to the tens of millions of dollars annually for a period of years following the implementation of the measure.

Prosecution of Youth in Adult Court

Net Reduction in State Costs. If fewer youths are tried and convicted in adult criminal court, the measure would have a number of fiscal effects on the state. First, it would reduce state prison and parole costs as youths affected by the measure would no longer spend any time in prison or be supervised by state parole agents following their release. In addition, because juvenile delinquency court proceedings are generally shorter than adult criminal court proceedings, the measure would reduce state court costs. These savings would be partially offset by increased state juvenile justice

costs as youths affected by the measure would generally spend a greater amount of time in a DJJ facility. However, a portion of the cost of housing these youths in DJJ would be paid for by counties. In total, we estimate that the net savings to the state from the above effects could be around a few million dollars annually.

Net Increase in County Costs. If fewer youths are tried and convicted as adults, the measure would also have a number of fiscal effects on counties. First, as discussed above, counties would be responsible for paying a portion of the costs of housing these youth in DJJ. In addition, county probation departments would be responsible for supervising these youths following their release from DJJ. We also note that because juvenile delinquency proceedings are generally shorter than adult criminal proceedings, the above county costs would be partially offset by some savings in various ways. For example, because youths can be housed in county juvenile halls prior to and during court proceedings, youths affected by the measure would likely spend less time in these facilities. Similarly, county agencies involved in court proceedings for these youths, such as district attorneys and public defenders, would also experience a reduction in workload. In total, we estimate that the net costs to counties due to the above effects could be a few million dollars annually.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects, which could widely range depending on such factors as the discretion exercised by (1) the Board of Parole Hearings in determining whether to grant inmates parole and (2) the California Department of Corrections and Rehabilitation in determining whether to grant additional credits:

- Net state savings that could range from the tens of millions of dollars to the low hundreds of millions of dollars annually primarily due to a reduction in the prison population from additional paroles granted and credits earned.
- Net county costs that could range from the millions to tens of millions of dollars annually, declining to a few million dollars after initial implementation of the measure.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance