Proposition 6

Criminal Penalties and Laws. Public Safety Funding. Statute.

Background

Criminal Justice Programs and Funds. State and local governments share responsibility for operating and funding various parts of California's criminal justice system. Generally, the state funds and operates prisons, parole, and the courts while local governments are responsible for community law enforcement, such as police, sheriff, and criminal prosecutions.

The state supports some criminal justice activities that have traditionally been a local responsibility. In 2007-08, the state allocated hundreds of millions of dollars for local criminal justice programs. This includes $439 million for three such programs, the Citizens' Option for Public Safety, the Juvenile Justice Crime Prevention Act, and Juvenile Probation and Camps Funding.

The state also administers the State Penalty Fund which collects revenues from fees assessed to some criminal offenders. These funds are disbursed for various purposes, including restitution to crime victims and peace officer training. Also, a portion is transferred to the state General Fund.

Criminal Sentencing Laws. State laws define three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. State laws specify the penalty options available for each crime, such as the maximum sentence of imprisonment in county jail or state prison. About 18 percent of persons convicted of a felony are sent to state prison. Other felons are supervised on probation in the community, sentenced to county jail, pay a fine, or have some combination of these punishments.

The state operates 33 state prisons and other facilities that had a combined adult inmate population of about 171,000 as of May 2008. The costs to operate the California Department of Corrections and Rehabilitation in 2008-09 are estimated to be approximately $10 billion. The average annual cost to incarcerate an inmate is estimated to be about $46,000. The state prison system is currently experiencing overcrowding because there are not enough permanent beds available for all inmates. As a result, gymnasiums and other rooms in state prisons have been converted to house some inmates.

Supervision of Parolees and Sex Offenders. Offenders who have been convicted of a felony and serve their time in state prison are supervised on parole by the state after their release. State policies determine the number of parole agents and other staff necessary to supervise these parolees.

Proposition 83 (commonly referred to as "Jessica's Law") was approved by the voters in November 2006. Among other changes relating to sex offenders, the proposition requires that certain persons who have been convicted of a felony sex offense be moni-

tored by a Global Positioning System (GPS) device while on parole and for the remainder of their lives. The proposition did not specify whether state or local governments would be responsible for paying for the GPS supervision costs after these offenders are discharged from state parole supervision.

Proposal

This measure makes several changes to current laws relating to California's criminal justice system. The most significant of these changes are described below.

Required Spending Levels for Certain New and Existing Criminal Justice Programs. The proposal creates new state-funded criminal justice programs. The measure also requires that funding for certain existing programs be at least continued at their 2007-08 levels. In total, the measure requires state spending of at least $965 million for specified criminal justice programs beginning in 2009-10. This amount reflects an increase in funding of $365 million compared to the amount provided in the *2007-08 Budget Act*. Figure 1 summarizes the increase in state spending required by this measure, generally beginning in 2009-10.

Figure 1

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Required Spending Levels for New and Existing Criminal Justice Programs Affected by This Measure

(In Millions)

	Current Spending Level	Proposition 6	Change
Local law enforcement[a]	$187	$406	$219
Local juvenile programs	413[b]	479	66
New offender rehabilitation programs and evaluations	—	23	23
New crime victim assistance programs	—	13	13
Other new state programs	—	45	45
Totals	**$600**	**$965**	**$365**

[a] Local law enforcement includes funding directed to police, sheriffs, district attorneys, adult probation, and jails.

[b] Includes $93 million for the Youthful Offender Block Grant as authorized by current law for 2009-10.

Detail may not total due to rounding.

Most of the new state spending required by this measure would be for local law enforcement activities, directed primarily to police, sheriffs, district attorneys, jails, and probation offices. The remaining new state spending would be provided for local juvenile programs, offender rehabilitation, crime victim assistance, and other state criminal

justice programs. Specifically, the measure requires new state spending for such purposes as:

- Increased supervision of adult probationers by counties ($65 million);
- Juvenile facility repair and renovation and the operation of county probation programs for youth ($50 million);
- City law enforcement efforts to target various crimes, including violent, gang, and gun crimes ($30 million);
- Prosecution of violent, gang, and vehicle theft crimes ($25 million);
- The construction and operation of county jails ($25 million);
- Assisting county sheriff and mid-size city police agencies to participate in county, regional, and statewide enforcement activities and programs ($20 million);
- Programs to assist parolees in their reentry into communities ($20 million).

The measure prohibits the state or local governments from using the new funding to replace funds now used for the same purposes. In addition, the measure requires that future funding for most of these new and existing programs be adjusted annually for inflation.

In addition, this measure redistributes the State Penalty Fund in a way that increases training support for peace officers, corrections staff, prosecutors, and public defenders, as well as various crime victims' services programs, while eliminating the existing transfer of the money to the state General Fund. About $14 million was transferred from the State Penalty Fund to the General Fund in 2007-08. The measure also requires that Youthful Offender Block Grant funds—provided by the state to house, supervise, and provide various types of treatment services to juveniles—be distributed to county probation offices and eliminates existing provisions that permit these funds to be provided directly to drug treatment, mental health, or other county departments.

This measure also creates a new state office in part to distribute public service announcements about crime rates and criminal justice statutes, such as the "Three Strikes and You're Out" law, and establishes a commission to evaluate publicly funded early intervention and rehabilitation programs designed to reduce crime.

Increased Penalties for Certain Crimes. The measure increases criminal penalties for certain crimes, as well as creates some new felonies and misdemeanors. These changes to penalties include crimes related to gang participation and recruitment, intimidation of individuals involved in court proceedings, possession and sale of methamphetamines, vehicle theft, removing or disabling a GPS device, and firearms possession. These and other proposed increases in penalties would likely result in more offenders being sentenced to state prison or jail for a longer period of time for the crimes specified

in the measure. Figure 2 lists some examples of increased penalties and new crimes created by this measure.

Figure 2

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Examples of Increased Penalties and New Crimes Created by This Measure

Gang Participation and Recruitment

- Gang members[a] convicted of home robbery, carjacking, extortion, or threats to witnesses would be subject to life terms in prison.
- Adds additional five years in prison for gang recruitment if the person recruited was under the age of 14.
- Doubles penalties for inmates who commit a felony as part of a gang.
- Ten-year additional penalty for gang members who attempt to commit violent crimes.
- Failure to register as a gang member with local law enforcement would be a felony or misdemeanor, depending on the underlying conviction.

Methamphetamine Crimes

- Defines possession of methamphetamines as a felony. (This crime currently can be prosecuted as a misdemeanor or a felony.)[b]
- Increases prison term for sale, possession for sale, and transportation of methamphetamines generally by one year.

Vehicle Theft

- Adds additional year in prison for car theft if theft was for purpose of selling the stolen car.
- Allows law enforcement authorities to impound vehicles for up to 60 days when a gun used in a crime is found in one.
- Generally prohibits probation for a conviction of car theft if the offender has multiple prior convictions for car theft.

Other Increased Penalties and New Crimes

- Up to four-year prison term for intimidating a witness, judge, or other person for participating in a court proceeding.
- Unauthorized removal of an offender's GPS device that is required under existing law or worn as a condition of probation or parole would be a misdemeanor or felony, depending on the underlying conviction.
- Ten additional years in prison for possession of a concealed weapon by certain convicted felons.

a Generally as defined in Penal Code 186.22.

b Measure does not change eligibility for some offenders for drug treatment diversion under Proposition 36.

Various Changes to State Parole Policies. The measure makes several changes to state parole policies. Among the most significant changes to state parole is a reduction in the average parolee caseload of parole agents from about 70 parolees per parole agent to 50 parolees per parole agent. The measure also requires the state to pay the cost of GPS monitoring of sex offenders after their discharge from parole supervision.

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Other Criminal Justice Changes. The measure makes several other changes to state laws affecting the criminal justice system. The more significant changes are summarized below:

- *Gang Databases.* The measure requires the state to develop two databases related to gang information for the use of law enforcement agencies.
- *Hearsay Evidence.* In general, the testimony of a witness is considered hearsay when it repeats someone's previous statement for the purpose of proving that the content of that statement is true. Hearsay evidence is not admissible in court except under limited circumstances. The measure would expand the circumstances in which hearsay evidence is admissible in court, especially in cases where someone has intimidated or otherwise tampered with a witness.
- *Gang Injunction Procedures.* The measure changes legal procedures to make it easier for local law enforcement agencies to bring lawsuits against members of street gangs to prevent them from engaging in criminal activities and makes violation of such court-ordered injunctions a new and separate crime punishable by fines, prison, or jail.
- *Criminal Background Checks for Public Housing Residents.* Among other state expenditures, this measure provides $10 million annually for grants to governmental agencies responsible for enforcing compliance with public housing occupancy requirements. Agencies that accepted these funds would be required to conduct criminal background checks of all public housing residents at least once per year.
- *Temporary Housing for Offenders.* The measure permits counties with overcrowded jails to operate temporary jail and treatment facilities to house offenders. These temporary facilities would be required to meet local health and safety codes that apply to residences.
- *Release of Undocumented Persons.* This measure prohibits a person charged with a violent or gang-related felony from being released on bail or his or her own recognizance pending trial if he or she is illegally in the United States.
- *Juvenile Justice Coordinating Council Membership.* Each county that receives state funds for certain juvenile crime prevention grant programs currently must have a juvenile justice coordinating council that develops a comprehensive plan on how to provide services and supervision to juvenile offenders. This measure changes who may participate on the council. For example, counties would no longer be required to include representatives of community-based substance abuse treatment programs.

- *Juveniles in Adult Court.* The measure would expand the circumstances under which juveniles would be eligible for trial in an adult criminal court, rather than the juvenile court system, for certain gang-related offenses.

Fiscal Effects

This measure would have significant fiscal effects on both the state and local governments. The most significant fiscal effects are summarized in Figure 3 and discussed in more detail below. These fiscal estimates could change due to pending federal court litigation or budget actions.

Figure 3
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Summary of Fiscal Effects on State and Local Governments

Fiscal Effects	Amount
Increase in net annual state costs primarily for the following: • Required spending of $965 million for certain new and existing criminal justice programs, an increase of $365 million. • Requirement that certain criminal justice program spending increase annually with inflation. • Increased penalties for certain crimes resulting in higher prison population. • Increased parole costs due to reduced caseload requirements.	More than $500 million within first few years, which would grow by tens of millions of dollars annually in subsequent years.
Additional one-time state capital outlay costs for prison facilities.	Potentially more than $500 million.
Costs and savings to state trial courts, county jails, and other criminal justice agencies.	Unknown net fiscal impact.

Required Spending Levels for Certain New and Existing Criminal Justice Programs. The measure requires state spending for various state and local criminal justice programs totaling about $965 million beginning in 2009-10, an increase of $365 million compared to 2007-08. We estimate that this amount will increase by about $100 million in about five years due to the measure's provisions that require that state funding for certain programs be adjusted each year for inflation. In addition, the redistribution of

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the State Penalty Fund could result in about a $14 million loss in state General Fund revenues compared to the 2007-08 budget.

Increased Penalties for Certain Crimes; Parole Policy Changes. Various provisions of this measure would result in additional state costs to operate the prison and parole system. These costs are likely to grow to at least a couple hundred million dollars annually after a number of years. These increased costs are mainly due to provisions that increase penalties for gang, methamphetamines, vehicle theft, and other crimes, as well as provisions that decrease parole agent caseloads and require the state to pay for the cost of GPS monitoring for sex offenders discharged from parole supervision.

State Capital Outlay Costs. The provisions increasing criminal penalties for certain crimes could also result in additional one-time capital outlay costs, primarily related to prison construction and renovation. The magnitude of these one-time costs is unknown but potentially could exceed $500 million.

State Trial Courts, County Jails, and Other Criminal Justice Agencies. This measure could have significant fiscal effects on state trial courts, county jails, and other criminal justice agencies, potentially resulting in both new costs and savings. The net fiscal effect of its various provisions is unknown as discussed further below.

On the one hand, the measure could result in increased costs to the extent that the additional funding provided for local law enforcement activities results in more offenders being arrested, prosecuted, and incarcerated in local jails or state prisons. There could also be additional jail costs for holding undocumented offenders arrested for violent or gang-related crimes who would no longer be eligible for bail or release on their own recognizance. The measure's provision permitting the use of temporary jail and treatment facilities could result in additional costs to counties to purchase, renovate, and operate such temporary facilities. The magnitude of these costs would depend primarily on the number and size of new temporary facilities utilized by counties.

On the other hand, the measure provides some additional funding for prevention and intervention programs designed to reduce the likelihood that individuals will commit new crimes. To the degree that these programs are successful, they could result in fewer offenders being arrested, prosecuted, and incarcerated in local jails or state prisons than would otherwise occur. Additionally, the measure's provisions increasing criminal penalties for specified crimes could reduce costs related to courts and other criminal justice agencies by deterring some offenders from committing new crimes.

Other Impacts on State and Local Governments. Other savings to the state and local government agencies could result to the extent that offenders imprisoned for longer periods under the measure's provisions require fewer government services, or commit fewer crimes that result in victim-related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would no longer become taxpayers under current law. The extent and magnitude of these impacts are unknown.