



Legislation Text

File #: 08-1368, **Version:** 1

Supervisor Briggs recommending the Board of Supervisors oppose Proposition 5, "The Nonviolent Offender Rehabilitation Act of 2008," on the November, 2008 state ballot.

RECOMMENDED ACTION: Approve.

Background: According to the official ballot summary as currently worded, Proposition 5:

- Allocates \$460,000,000 annually to improve and expand treatment programs for persons convicted of drug and other offenses.
- Limits court authority to incarcerate offenders who commit certain drug crimes, break drug treatment rules or violate parole.
- Substantially shortens parole for certain drug offenses; increases parole for serious and violent felonies.
- Divides Department of Corrections and Rehabilitation authority between two Secretaries, one with six year fixed term and one serving at the pleasure of Governor. Provides five year fixed terms for deputy secretaries.
- Creates 19 member board to direct parole and rehabilitation policy.

The Legislative Analyst's Office (LAO) Estimate of Net State and Local Government Fiscal Impact includes:

- Increased state costs over time potentially exceeding \$1 billion annually primarily for expanding drug treatment and rehabilitation programs for offenders in state prisons, on parole, and in the community.
- State savings over time potentially exceeding \$1 billion annually due primarily to reduced prison and parole operating costs.
- Net one-time savings on capital outlay costs for prison facilities that eventually could exceed \$2.5 billion
- Unknown net fiscal effect on county operations and capital outlay.

According to the LAO analysis, this measure (1) expands drug treatment diversion programs for criminal offenders, (2) modifies parole supervision procedures and expands prison and parole rehabilitation programs, (3) allows inmates to earn additional time off their prison sentences for participation and performance in rehabilitation programs, (4) reduces certain penalties for marijuana possession, and (5) makes miscellaneous changes to state law related mainly to state administration of rehabilitation and parole programs for offenders.

The complete LAO analysis is attached to this agenda item. Key provisions of Proposition 5 include:

Three-Track Drug Treatment System

Proposition 5 establishes a drug treatment system which diverts offenders into one of three possible

treatment programs depending on the level of their prior offense.

Track 1: Offenders with no prior violent or serious offenses, but who may have prior drug offenses. Track 1 is a six to 18 month pre-trial diversion program that does not require probation supervision. An offender who completes an assigned drug treatment program and stays out of trouble would have the charges dismissed.

Track 2: Offenders who have been convicted of a nonviolent drug possession offense. Track 2 is a modified form of existing Proposition 36 programs which would divert eligible participants to treatment and probation for up to a year, or 24 months with extensions. Offenders could not participate in Track 2 if they have had a violent or serious felony on their record during the prior five years. Track 2 allows diversion of offenders who were also convicted at the same time of a non-drug related crime. However, offenders with five or more offenses in the prior 30 months (other than infractions) would be excluded from diversion under Track 2.

Track 3: Offenders who have committed a nonviolent drug possession violation, as well as those who have committed other types of crimes but appear to have a drug problem. Track 3 is similar to existing drug court programs, and would provide treatment and probation supervision in lieu of incarceration in prison or jail for up to 18 months, or 24 months with an extension. Judges would generally be provided discretion as to which nonviolent drug possession offenders would be admitted, except that a drug offender excluded from Track 2 for having five or more prior felonies or misdemeanors in the prior 30 months must be placed in Track 3.

Changes to State Parole and Rehabilitation Programs

Proposition 5 makes a number of changes to the state's current parole system, affecting which offenders can be returned to prison and jail for parole violations, revising and often shortening parole terms, changing parole revocation procedures, and require new program for offenders returning to the community. Proposition 5 generally prohibits certain parolees from being returned to State prison for technical or misdemeanor parole violations, but it would allow revocation of parolees who committed felony violations of parole, were classified high-risk by the California Department of Corrections and Rehabilitation (CDCR), or have violent or serious offenses on their record. Proposition 5 would allow offenders to request up to a year of rehabilitation services within one year after they are discharged from parole. These services would be provided by county probation departments and reimbursed by CDCR.

Proposition 5 creates a new 21-member Parole Reform Oversight and Accountability Board with authority to review, direct, and approve the rehabilitation programs and to set parole policies. State agencies must collect and report information on the inmate and parole populations and the effectiveness of rehabilitation programs for these offenders, and commission research by a public university on parole policies and practices.

New Juvenile Treatment Program

Proposition 5 creates a new county-operated program for nonviolent youth under age 18 deemed to be at risk of committing future drug offenses. The program would provide drug treatment, mental health medication and counseling, family therapy, educational stipends for higher education, employment stipends and transportation services.

Changes in Marijuana Possession Penalties

Proposition 5 would make the possession of less than 28.5 grams of marijuana by either an adult or a minor an infraction (similar to a traffic ticket) rather than a misdemeanor. Adults would be subject to fines which would be used to provide additional support for the new youth programs created by the measure.

Mental Health Provisions

Proposition 5 would prohibit the denial of drug treatment services to a person due to a psychiatric or developmental disorder. While mental health treatment may be required in addition to drug treatment, it may not be provided in lieu of all other services. Adult offenders, except for parolees, with both a serious mental illness and a substance abuse problem who are in court-supervised drug treatment programs would be considered for mental health services paid for by the Mental Health Services Act (Proposition 63), a 2004 initiative that expanded community mental health services.

Funding

Proposition 5 would require an allocation of \$460 million annually from the State General Fund to the Substance Abuse Treatment Trust Fund (SATTF) for support of the three-track drug treatment diversion program and the program for juvenile treatment services, with periodic adjustments for inflation and changes in population. Proposition 36 alone is currently funded at \$100 million. Proposition 5 would allow the State to impose a requirement for matching funds in order for counties to receive SATTF funds. After funds are set aside for certain administrative and program costs, the measure designates 15 percent of the remainder for Track 1 programs, 60 percent for Track 2 programs, 10 percent for Track 3 programs, and 15 percent for juvenile programs.

Reason for Recommendation:

Potential County Impacts

California State Association of Counties. While acknowledging the need for additional treatment funding, the California State Association of Counties (CSAC) notes in a recent report that Proposition 5 would earmark additional State General Fund revenues for these programs without new revenues. County probation departments would have to provide rehabilitative services to discharged parolees for up to one year for those parolees who opt into the program. While counties are to be reimbursed for such services, sustainability and certainty of funding is a concern. Given the State's fiscal outlook, the measure may result in additional reductions to programs also supported by the State General Fund, and could result in cuts to other county programs. CSAC further cautions that it is not clear how the provision of Proposition 5 will affect the distribution of Proposition 63 funds at the local level, and indicates that Proposition 63 requires counties to undergo extensive community input processes to determine programming funded by the Proposition.

Legislative Analyst's Office. According to the LAO, Proposition 5 would provide more than \$300 million in additional funding annually for drug treatment diversion programs and juvenile programs that would be operated mainly by counties. While counties are likely to incur increased expenditures over time for the programs, the LAO indicates that the increases are generally in line with the allocations that counties would receive. However, the possibility that the state may require counties to provide matching funds to receive SATTF funds, and the provisions requiring use of Proposition 63 funds for mentally ill offenders placed in drug treatment diversion programs could increase county costs. The LAO suggests that some counties could face added capital outlay costs for housing parole violators who would be diverted from prison to jails. However, these costs could be offset by

the diversion of drug offenders from jails to treatment in the community. The LAO concludes that the full potential impact of Proposition 5 on counties cannot be determined.

Support and Opposition

Organizations Opposing Prop 5

Los Angeles County Board of Supervisors
Mothers Against Drunk Driving (MADD)
Crime Victims United
California League of United Latin American Citizens
National Drug-Free Workplace Alliance
National Association of Drug Court Professionals
California Police Chiefs Association
LULAC National Health Commission
California District Attorneys Association
California State Sheriffs Association
California Narcotics Officers Association
Drug Prevention Network of America
Californians for Drug Free Schools
California Association of Drug Court Professionals
Chief Probation Officers of California
Los Angeles County Prosecutors Association
Drug Prevention Network of the Americas
International Scientific and Medical Forum on Drug Abuse
Institute on Global Drug Policy
International Task Force on Strategic Drug Policy
Students Taking Action Not Drugs (STAND)
Drug Free America Foundation
Save Our Society From Drugs (SOS)
D.A.R.E. America
Student Drug Testing Coalition
San Dieguito Alliance

Organizations Supporting Proposition 5

California Society of Addiction Medicine
California Academy of Family Physicians
California Association of Addiction Recovery Resources
California Association of Alcoholism and Drug Abuse Counselors
County Alcohol and Drug Program Administrators' Association of California
Coalition of Alcohol and Drug Associations
California Association for Alcohol and Drug Educators
California Association of Alcohol and Drug Program Executives
Aegis Medical Systems, Inc
AIDS Emergency Fund
AIDS/HIV Health Alternatives
Alpha Project for the Homeless
BAART
Behavioral Health Services

Bi-Valley Medical Clinic
California Hepatitis C Task Force
California Opioid Maintenance Providers (COMP)
Common Ground - The Westside HIV Community Center
CRI-HELP, INC
F.O.U.N.D
H.A.A.R.T., Inc
Hollywood & Vine Recovery Center
Homeless Health Care Los Angeles
House of UHURU
Janus of Santa Cruz
L.A. CADA - Los Angeles Centers for Alcohol and Drug Abuse
Long Beach South Bay Substance Abuse Coalition
Marin Treatment Center, Inc
National Association on Alcohol, Drugs and Disability
National Council of Alcoholism & Drug Dependence - Long Beach
National Council of Alcoholism & Drug Dependence - South Bay
Nationwide Medical Group, Inc.
Pathway Society, Inc
People in Progress
Practical Recovery Services - La Jolla
Project Inform
Responsible Recovery
San Francisco Health Commission
Serene Center, Inc.
Sober Living Network
Stepping Stone of San Diego
Tarzana Treatment Centers Inc
The Drug Abuse Alternatives Center
The Effort
The Gardner House
Western Pacific Med/Corp
League of Women Voters of California
Consumer Federation of California
California Democratic Party
California Young Democrats
California State Conference of the NAACP
Latino Voters League
Color of Change.Org
[National Latino Congreso](#)
AWARE (Always Working toward Advancing Recovery Environments)
Women's Council California Chapter National Association of Social Workers
National Working Positive Coalition
Association of Community Human Services Agencies
Education Not Incarceration
W. Haywood Burns Institute
Wolfe Center/ Juvenile Justice Network
Community Justice Network for Youth

Larkin Street Youth Services
Students for Sensible Drug Policy
Youth Justice Coalition/Free LA
Youth and Family Enrichment Services
Youth and Family Services
California Coalition for Ethical Mental Health Care
California Council of Community Mental Health Agencies
Mental Health Association in CaliforniaCalifornia Church IMPACT
First African Presbyterian Church - UN Ministry
Interfaith Drug Policy Initiative
Progressive Christians Uniting
Second Chance Evangelist Ministries
Southern California Ecumenical Council
California Labor Federation
American Federation of State, County and Municipal Employees California (AFSCME California)
SEIU California State Council
A New PATH (Parents for Addiction Treatment & Healing)
A New Way of Life Re-entry Project
Asian Americans for Community Involvement (AACI)
Downtown Women's Center
Ex-Offender Action Network
Friends Outside of Santa Cruz County
Idriss Stelley Foundation
Returning Home Foundation
Santa Cruz Community Action Board
Santa Cruz Community Counseling Center
Save Our Sons
St. Anthony Foundation
United Job Creation Coalition
Watts Labor Community Action Committee
American Civil Liberties Union of Northern California
American Civil Liberties Union of Southern California
Center for Health Justice
Center on Juvenile and Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Los Angeles Prevention Task Force
Project Inform
San Francisco Bay Area Drug Policy Reform
Southern California HIV Advocacy Coalition
Stop Prisoner Rape

Action to be taken following Board approval: The Chief Administrative Office will convey the Board's action, if any, on Proposition 5 to relevant departments so they may take positions consistent with the Board's position.

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