Proposition 83

Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.

Background

Definition of Sex Offenses. Sex offenses are crimes of a sexual nature. They vary in type and can be misdemeanors or felonies. For example, distribution of obscene material is a misdemeanor and rape is a felony sex offense. Felony offenses are more serious crimes than misdemeanors.

Punishment for Committing Sex Offenses. Current law defines the penalties for conviction of sex-related crimes. The punishment depends primarily on the type and severity of the specific offense. Conviction of a misdemeanor sex offense is punishable by up to a year in county jail, probation, fines, or a combination of the three. Conviction of a felony sex offense can result in the same penalties as a misdemeanor or a sentence to state prison for up to a life term. The penalty assigned by the court for a felony conviction depends on the specific crime committed, as well as other factors such as the specific circumstances of the offense and the criminal history of the offender. There are about 8,000 persons convicted of a felony sex offense in California each year. Of these, about 39 percent are sent to state prison. Most of the rest are supervised on probation in the community (5 percent), sentenced to county jail (1 percent), or both (53 percent).

Sex Offender Registration, Residency Requirements, and Monitoring. Current law requires offenders convicted of specified felony or misdemeanor sex crimes to register with local law enforcement officials. There are approximately 90,000 registered sex offenders in California.

Current law bars parolees convicted of specified sex offenses against a child from residing within one-quarter or one-half mile (1,320 or 2,640 feet, respectively) of a school. The longer distance is for those parolees identified as high risk to reoffend by the California Department of Corrections and Rehabilitation (CDCR).

The CDCR utilizes Global Positioning System (GPS) monitoring devices to track the location of some sex offenders on parole. Currently, this monitoring is limited to about 1,000 sex offenders who have been identified as high risk to reoffend. Some county probation departments also use GPS to monitor some sex offenders on probation.

Sexually Violent Predators (SVP). Specified sex offenders who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and evaluation to determine whether they meet the criteria for an SVP. Under current law, an SVP is defined as "a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that

he or she will engage in sexually violent criminal behavior." Those offenders who are found to meet the criteria are referred to district attorneys. District attorneys then determine whether to pursue their commitment by the courts to treatment in a state mental hospital as an SVP.

Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, offenders who have not completed their prison sentences continue to be held in prison. However, if an offender's prison sentence has been completed, he or she may be held either in county custody or in a state mental hospital. Offenders designated as SVPs by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

As noted above, state mental hospitals hold sex offenders who have been committed as SVPs. State mental hospitals also hold some sex offenders who have completed their prison sentences, but are still undergoing SVP evaluations or commitment proceedings. As of June 2006, 456 sex offenders were being held in state hospitals with a commitment by a court as an SVP. In addition, 188 sex offenders were being held in state mental hospitals, and 81 were in county custody pending the completion of commitment proceedings.

Proposal

Increase Penalties for Sex Offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases:

- ***It broadens the definition*** of certain sex offenses. For example, the measure expands the definition of aggravated sexual assault of a child to include offenders who are at least seven years older than the victim, rather than the ten years required under current law.
- ***It provides for longer penalties*** for specified sex offenses. For example, it expands the list of crimes that qualify for life sentences in prison to include assault to commit rape during the commission of a first degree burglary.
- ***It prohibits probation*** in lieu of prison for some sex offenses, including spousal rape and lewd or lascivious acts.
- ***It eliminates early release credits*** for some inmates convicted of certain sex offenses (for example, habitual sex offenders who have multiple convictions for specified felony sex offenses such as rape).
- ***It extends parole*** for specified sex offenders, including habitual sex offenders.

These changes would result in longer prison and parole terms for the affected offenders.

Finally, this measure increases court-imposed fees currently charged to offenders who are required to register as sex offenders.

Require GPS Devices for Registered Sex Offenders. Generally under this measure, individuals who have been convicted of a felony sex offense that requires registration and have been sent to prison would be monitored by GPS devices while on parole and for the remainder of their lives.

The CDCR would be authorized to collect fees from affected sex offenders to cover the costs of GPS monitoring. The amount of fees collected from individual offenders would vary depending on their ability to pay.

Limit Where Registered Sex Offenders May Live. This measure bars any person required to register as a sex offender from living within 2,000 feet (about two-fifths of a mile) of any school or park. A violation of this provision would be a misdemeanor offense, as well as a parole violation for parolees. The longer current law restriction of one-half mile (2,640 feet) for specified high-risk sex offenders on parole would remain in effect. In addition, the measure authorizes local governments to further expand these residency restrictions.

Change SVP Law. This measure generally makes more sex offenders eligible for an SVP commitment. It does this by (1) reducing from two to one the number of prior victims of sexually violent offenses that qualify an offender for an SVP commitment and (2) making additional prior offenses—such as certain crimes committed by a person while a juvenile—"countable" for purposes of an SVP commitment. The measure also requires that SVPs be committed by the court to a state mental hospital for an undetermined period of time rather than the renewable two-year commitment provided for under existing law. As under current law, once an offender had received a commitment as an SVP, he or she could later be released from a state hospital by the courts if (1) DMH determined the individual should no longer be held or (2) the offender successfully petitioned a court for release.

The measure also changes the standard for release of SVPs from a state mental hospital. For example, current law generally requires DMH to examine the mental condition of a sex offender each year. This measure specifically requires DMH, as part of this annual review, to examine whether a person being held in a state hospital as an SVP still meets the definition of an SVP, whether release is in the best interest of the person, and whether conditions could be imposed at time of release that would adequately protect the community. The impact of these changes on the number of SVPs is unknown.

Fiscal Effects

This measure would have a number of significant fiscal effects on state and local agencies. The major fiscal effects are discussed below.

State Prison Costs. This measure would increase the prison population, resulting in a significant increase in prison operating costs. In particular, increasing sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a larger prison population over time. This would

result in costs of unknown magnitude, but likely to be in the tens of millions of dollars annually once fully implemented in less than ten years. It is also possible that this measure could eventually result in significant additional capital outlay costs to accommodate the increase in the inmate population.

The impact on the prison population of requiring sex offenders to wear GPS devices is unclear. On the one hand, GPS monitoring could increase the number of offenders who are identified and returned to prison for violating the conditions of their parole or committing new crimes. On the other hand, GPS monitoring could act as a deterrent for some offenders from committing new violations or crimes, hence reducing the likelihood that they return to prison. Whatever net impact GPS does have on returns to prison will also affect parole, court, and local law enforcement workloads and associated costs.

State Parole and GPS Monitoring Costs. The initiative's provisions requiring specified registered sex offenders to wear GPS devices while on parole and for the remainder of their lives would result in additional costs for GPS equipment, as well as for supervision staff to track offenders in the community. These costs are likely to be in the several tens of millions of dollars annually within a few years. These costs would grow to about $100 million annually after ten years, with costs continuing to increase significantly in subsequent years.

Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear whether local governments would bear some of these long-term costs. These costs likely would be partially offset by several million dollars annually in court and parolee fees authorized by the measure, though the exact amount would largely depend on offenders' ability to pay.

State SVP Program Costs. By making more sex offenders eligible for SVP commitments, this measure would result in increased state costs generally in the following categories:

- ***Referral and Commitment Costs.*** These costs are mainly associated with screening sex offenders referred by CDCR to DMH to determine if they merit a full evaluation, performing such evaluations, and providing expert testimony at court commitment hearings. This measure would increase these state costs probably by the low tens of millions of dollars annually. These costs would begin to occur in the initial year of implementation.
- ***State Hospital Costs.*** State costs to staff, maintain, and operate the mental hospitals could reach $100 million annually within a decade and would continue to grow significantly thereafter. These costs would result from additional SVP commitments to state mental hospitals, as well as holding some sex offenders—who have completed their prison sentences—in state mental hospitals while they are being evaluated to determine whether they

should receive an SVP commitment. (Some of the sex offenders undergoing evaluation as SVPs might also be held in county jails.)

Additional SVP commitments could eventually result in one-time capital outlay costs of up to several hundred million dollars for the construction of additional state hospital beds.

The additional operational and capital outlay costs would be partly offset in the long term. This is because the longer prison sentences for certain sex crimes required by this measure would delay SVP referrals and commitments to state mental hospitals. These costs would also be partly offset because the change from two-year commitments to commitments for an undetermined period of time is likely to reduce DMH's costs for SVP evaluations and court testimony. However, our analysis indicates that on balance the operating and capital outlay costs to the state are likely to be substantially greater than the savings.

Court and Jail Fiscal Impacts. This measure would also affect state and local costs associated with court and jail operations. For example, the additional SVP commitment petitions resulting from this measure would increase court costs for hearing these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in county jail facilities. The provision making it unlawful for sex offenders to reside within 2,000 feet of a school or park could result in additional court and jail costs to prosecute violations of this provision.

Other provisions of this measure could result in savings for court and jail operations. The measure's provisions providing for the indeterminate commitment of SVPs, instead of the current two-year recommitment process, would reduce county costs for SVP commitment proceedings. Provisions of this measure would increase the length of time that some sex offenders spend in prison or mental hospitals. To the extent that this occurs, these offenders would likely commit fewer crimes in the community, resulting in some court and local criminal justice savings.

Given the potential for the factors identified above to offset each other, the net fiscal impact of this measure on state and local costs for the court and jail operations cannot be determined at this time.

Other Impacts on State and Local Governments. There could be other savings to the extent that offenders imprisoned for longer periods 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 have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown.