



COUNTY OF SAN DIEGO

BOARD OF SUPERVISORS

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

AGENDA ITEM

DATE: September 16, 2008

TO: Board of Supervisors

SUBJECT: OPPOSITION TO PROPOSITION 5, NONVIOLENT OFFENDER REHABILITATION ACT OF 2008 (NORA) (District: All)

SUMMARY:

Overview

Proposition 5, the Nonviolent Offender Rehabilitation Act of 2008 on the November 4, 2008 General Election ballot (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.

San Diego County District Attorney Bonnie Dumanis is recommending that the Board oppose this initiative for three primary reasons. (1) This measure would significantly reduce criminal offenders' individual accountability for their behaviors. (2) This measure would immediately cost the State of California and California Counties hundreds of millions of dollars in new expenses without any new revenues to offset these costs. And, (3) this measure would significantly increase criminal behavior and drug induced violence in our communities that we are sworn to protect by allowing large amounts of intoxicating narcotics, including methamphetamine, to be distributed without risk of major criminal penalties.

Recommendation(s)

DISTRICT ATTORNEY BONNIE DUMANIS, SHERIFF WILLIAM B. KOLENDER, VICE CHAIRWOMAN DIANNE JACOB, SUPERVISOR PAM SLATER-PRICE

1. Oppose Proposition 5, the Nonviolent Offender Rehabilitation Act of 2008 on the November 4, 2008 General Election ballot.

Fiscal Impact

Significant new costs estimated to exceed \$1 Billion annually without new revenues

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would be funded by appropriations contained in the Act and is not subject to appropriations by the State Legislature in the annual budget process. Because of the extreme complexity of the legal and administrative processes contained in the proposition, both short term and long term savings are very difficult to determine.

Business Impact Statement

N/A

Advisory Board Statement

N/A

BACKGROUND:

Proposition 5, the Nonviolent Offender Rehabilitation Act of 2008 on the November 4, 2008 General Election ballot is a sweeping and complicated sixty page initiative that would (1) expand drug treatment diversion programs for criminal offenders, (2) modify parole supervision procedures and expands prison and parole rehabilitation programs, (3) allow inmates to earn additional time off their prison sentences for participation and performance in rehabilitation programs, (4) reduce certain penalties for marijuana possession, and (5) make miscellaneous changes to state law related mainly to state administration of rehabilitation and parole programs for offenders.

After careful analysis of the complex new legal procedures and administrative changes contained in this proposition, no clear public benefit could be determined.

Just the opposite is anticipated. Without the threat of incarceration, most criminal offenders with diagnosed drug and alcohol addictions will be allowed to drift in the local criminal justice systems for long periods of time without being held accountable for their criminal behaviors. Among the most serious concerns about Proposition 5 are that the proposition would:

- Shorten parole for methamphetamine dealers and other drug felons from 3 years – to just 6 months;
- Make prosecution of major criminal offenses more difficult as defendants charged with crimes such as domestic violence, child abuse, mortgage fraud, identity theft, vehicular manslaughter, insurance fraud and auto theft, may effectively escape criminal prosecution altogether. If a violent offender is granted a hearing using “the drugs made me do it” defense, the burden of proof would shift to the prosecution to prove that the defendant should be held responsible for his or her crimes;
- Extend reductions to individual accountability far beyond the drug-dependent individual. Proposition 5 would treat methamphetamine dealers the same as an individual drug user;
- Establish two new State bureaucracies and new boards and commissions with no accountability, at a cost of hundreds of millions of dollars;
- Undermine successful rehabilitation and treatment programs. Current rehabilitation and drug courts are set up with defined goals and consequences. A large body of recent scientific research proves that, for many criminal offenders, these two elements are critical to effective rehabilitation and addiction treatment efforts;

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- Prohibit funds to be used for drug testing, which is an important tool used by treatment programs and the courts;
- Would require a four-fifths vote of the Legislature, which will make it nearly impossible to change any ineffective or cumbersome provision;
- Permit the possibility that offenders could re-offend five times before being incarcerated and would limit the courts ability to use jail sanctions as motivation to engage in treatment;
- Eliminate probation supervision for second time offenders that would permit them to commit more new offenses and have more drug-related violations before custody sanctions and custody treatment may be ordered; and,
- The specific lack of new revenues to support the State Legislative Analysts' projected \$1 Billion in immediate new costs would likely result in the reduction and diversion of State funding for proven juvenile justice and other public safety programs.

Proposition 5 is based upon the false premise that first time non-violent drug offenders are sentenced to state prison. Currently, no first-time offender arrested solely for possession is sent to prison. By law, first time non-violent drug offenders are offered drug diversion, treatment and delayed entry of judgment programs under PC 1000, Proposition 36 and Drug Courts (see below). It also falsely claims that it will save money, but in fact, shifts costs from the state to the counties with no identified source of funding. With the State budget facing chronic major deficits both now and for the foreseeable future, this proposition is a hollow promise. It would provide criminal offenders with the hope of addiction recovery without the availability of effective treatment programs.

An Oppose position is recommended for all the reasons above and the fact that California is experiencing both a financial downturn in the general economy and that the State is experiencing a budget deficit estimated to exceed \$15 Billion annually for the foreseeable future. The diversion of scarce public resources from existing programs to fund new complex legal procedures with no anticipated successful results will not decrease crime in California, reduce the numbers of people with drug addiction or improve the general public safety of the communities that elected officials are sworn to protect.

Linkage to the County of San Diego Strategic Plan

This proposal supports the Safe and Livable Communities Initiative of the County's Strategic Plan.

Respectfully submitted,

BONNIE M. DUMANIS

WILLIAM B. KOLENDER

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District Attorney

Sheriff

DIANNE JACOB
Vice Chairwoman, Second District

PAM SLATER-PRICE
Supervisor, Third District

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AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW	<input checked="" type="checkbox"/> Yes	
Written Disclosure per County Charter Section 1000.1 Required	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY FINANCE DIRECTOR	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> N/A
CHIEF FINANCIAL OFFICER	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> N/A
Requires Four Votes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY INFORMATION TECHNOLOGY DIRECTOR	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
COUNTY TECHNOLOGY OFFICE	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
DEPARTMENT OF HUMAN RESOURCES	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A

Other Concurrence(s): N/A

ORIGINATING DEPARTMENT: District Attorney

CONTACT PERSON(S):

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AUTHORIZED REPRESENTATIVE: _____
Raymond A. Fernandez
Deputy Chief Administrative Officer

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AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS:

N/A

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

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FISCAL IMPACT STATEMENT

DEPARTMENT: [Click here and type]

PROGRAM: [Click here and type]

PROPOSAL: [Click here and type]

			FUTURE YEARS ESTIMATED BUDGET OF PROPOSAL IF ADOPTED	
(a)	(b)	(c)	(d)	(e)
Budgeted Amount For Proposal	Proposed Change in Budgeted Amount	Proposed Revised Current Year Budget (a+b)	1st Subsequent Year	2nd Subsequent Year
Direct Cost				
Revenue/Other Offset				
NET GENERAL FUND COST				
Staff Years				

Sources of Revenue/Other Offset for Proposed Change and Subsequent Years:

Space-Related Impacts: Will this proposal result in any additional space requirements? Yes N/A

Support/Other Departmental Impacts: Yes N/A

Remarks: Yes N/A