California State Association of Counties®

July 23, 2020

To: CSAC Administration of Justice Committee

From: Josh Gauger, CSAC Legislative Representative
Stanicia Boatner, CSAC Legislative Analyst

Re: 2020 Ballot Initiative: Proposition 20 – Reducing Crime and Keeping California Safe Act of 2018 – ACTION ITEM

Recommendation
Staff recommends the Administration of Justice policy committee recommend "no position" to the CSAC Executive Committee and Board of Directors.

Summary
This measure amends state law to (1) increase penalties for certain theft-related crimes, (2) change the California Department of Corrections and Rehabilitation's (CDCR) existing non-violent offender release consideration process, (3) change county probation community supervision practices, and (4) require DNA collection from adults convicted of certain misdemeanors.

Background
The criminal justice system has undergone several significant changes over the last decade. These changes primarily intended to reduce county jail and state prison populations, costs of incarceration, and improve reentry and recidivism outcomes among the offender population. Proposition 20 proposes several amendments that overlap with these measures.

AB 109/2011 Public Safety Realignment
What it did: Among other changes, Chapter 15, Statutes of 2011 (AB 109) changed adult criminal sentencing so that lower-level—non-serious, non-violent, and non-sex registrant—felons served their sentences in county jail rather than state prison. Under AB 109, offenders convicted of a current non-serious, non-violent, and non-sex registrant felony are still sentenced to state prison if they have a prior conviction for a serious or violent felony or felony subjecting the offender to registration as a sex offender. The non-serious, non-violent, and non-sex registrant population currently being sentenced to state prison under this provision is now released on Post-Release Community Supervision (county probation oversight) rather than state parole. AB 109 was part of the broader 2011 Public Safety Realignment and the source of funding for counties to fulfill these responsibilities is protected under the constitutional amendments passed in Proposition 30 (2012). AB 109-related reforms also included new "tools" for managing the offender population which became a county responsibility, including "split sentences" and "flash incarceration." Split sentences require a period of Mandatory Supervision on county probation after a period of jail incarceration—similar to state parole. Separately, flash incarceration is an alternative sanction that may be utilized to require a short

(up to 10 days) jail incarceration as a response to a violation of the terms and conditions of community supervision (relevant here is Post-Release Community Supervision).

How Proposition 20 would change it: This ballot measure would *require* a supervising county agency to petition the court to revoke, modify, or terminate Post-Release Community Supervision, if the supervised person has violated the terms of their release for a third time. Meaning, a third violation would preclude the use of alternative sanctions by probation departments. Additionally, Proposition 20 *requires*, upon a decision to impose a period of flash incarceration, the probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

Proposition 47 (2014)

What it did: Proposition 47 implemented three broad changes to felony sentencing laws. First, it reclassified certain theft and drug possession offenses from felonies to misdemeanors unless the defendant has prior convictions for murder, rape, or certain sex or gun offenses. Second, it authorized defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions, subject to certain severe crimes noted above. Third, it authorized defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors, subject to certain severe crimes noted above. Additionally, the measure required state savings resulting from the implementation of the act to be transferred to a new fund for specified grant programs.

How Proposition 20 would change it: This ballot measure would make multiple changes to criminal sentencing which was impacted by Proposition 47.

- First, because DNA collection is generally authorized for felony convictions, as specified, individuals convicted of crimes that Proposition 47 reclassified from felonies to misdemeanors are no longer subject to DNA collection. Proposition 20 would add numerous misdemeanor convictions to the list of crimes or circumstances in which DNA collection is authorized. Examples include, shoplifting, possession of a controlled substance, assault or battery on school property when school activities are being conducted, disorderly conduct, or certain domestic violence crimes.
- Second, under current law (as impacted by Proposition 47) theft of money or property worth less than $950 is generally charged as petty theft or shoplifting—generally misdemeanors punishable by up to six months in county jail. Proposition 20 would specify that crimes such as identity theft, forgery, and unauthorized use of a vehicle cannot be charged as petty theft or shoplifting regardless of the value. Alternatively, Proposition 20 would have these crimes charged as “wobblers”—if charged as a misdemeanor, punishable by up to one year in jail, and if charged as a felony, punishable by up to three years in jail or prison.
- Third, Proposition 20 creates new crimes: serial theft and organized retail theft, as specified. These new crimes would apply to offenders who have been previously convicted two or more times on separate occasions of certain retail theft, petty theft, shoplifting, and other specified crimes. Similarly, these new crimes would be “wobblers” punishable by up to three years in jail.

Proposition 57

What it did: Proposition 57 reformed the juvenile and adult criminal justice system in California by (1) creating a parole consideration process for non-violent offenders who have served the full term for their primary criminal offense in state prison; (2) authorizing the CDCR to award credits earned for good conduct and approved rehabilitative or educational achievements; and (3) requiring judges to determine whether juveniles charged with certain crimes should be tried in juvenile or adult court. Pertinent to Proposition 20, offenders can be convicted of multiple crimes, including a primary crime for which they receive the longest amount of prison time. They can serve additional time due to certain case factors (e.g., use of a weapon or previous convictions). Proposition 57 allowed inmates convicted of non-violent felonies (as defined by current law) to be considered for release by the Board of Parole Hearings (BPH) after serving the term for their primary crimes.

How Proposition 20 changes it: This ballot measure classifies additional crimes as "violent" for the purposes of the Proposition 57 parole review process, which results in more individuals being excluded from review, and creates a higher threshold for release consideration. Additionally, the measure allows prosecutors to request a review of BPH release decisions. Under this proposition, violent crimes would now include crimes such as assault, domestic violence, specified human trafficking crimes, and solicitation to commit murder. Lastly, Proposition 20 would create additional review factors for the BPH and delay any reviews after a denial to two years (rather than one).

Proposition 20 Fiscal Impact

The Legislative Analyst's Office and Department of Finance estimate increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the non-violent offender release consideration process. Additionally, they estimate increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Lastly, there could be increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

Given the overlap with crimes reclassified under Proposition 47, this ballot measure could also reduce the state savings that is annually made available for certain grant programs.

Arguments in Support

Proponents of Proposition 20 generally argue that, despite the violent nature, certain crimes are incorrectly designated as non-violent under California law. Because they are designated as non-violent, offenders serving current state prison terms for these crimes are eligible for parole consideration after serving the full term for their primary offense (Proposition 57 early parole review process). This measure would designate these crimes as "violent" for the purposes of this review and, therefore, make the offenders ineligible for early parole consideration. Additionally, proponents argue that Proposition 20 provides protection against violent crime by allowing DNA collection from persons convicted of theft or drug offenses. Lastly, they argue that Proposition 20 strengthens sanctions against serial theft.

Arguments in Opposition
Opponents of Proposition 20 generally argue that California already has lengthy sentences and strict punishment for serious and violent crime and this measure would unnecessarily result in tens of millions of dollars being spent on prisons while cutting rehabilitation programs and support for crime victims. Additionally, opponents argue that increasing penalties for theft-related crimes will have a disproportionate impact on Black, Latino, and low-income individuals. Lastly, they argue that California has made progress by enacting criminal justice reforms to reduce prison spending and expand rehabilitation and this measure would repeal California's progress.

Policy Considerations
Proposition 20 includes elements that are both consistent with prior CSAC positions on related measures and inconsistent with CSAC's policy platform and positions.

AB 109 (No Position): CSAC did not have a formal position on AB 109 but actively negotiated the terms of 2011 Public Safety Realignment with an emphasis on local control and fiscal protections. Proposition 20 reduces flexibility afforded under AB 109 as it relates to county probation department decision making for violations of the terms and conditions of Post-Release Community Supervision. This reduced flexibility could result in increased jail incarceration and potentially increased jail costs which would have to be funded within existing county resources.

The CSAC 2011 Realignment platform states that CSAC will oppose efforts that limit county flexibility in implementing programs and services realigned in 2011 or infringe upon our individual and collective ability to innovate locally. Additionally, the AOJ Policy Platform states that the most cost-effective method of rehabilitating convicted persons is the least restrictive alternative that is close to the individual's community and should be encouraged where possible.

Proposition 47 (OPPOSE): CSAC opposed Proposition 47 which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permitted certain offenders to petition for resentencing. Supporting Proposition 20 may be consistent with this prior position. However, it should be considered with the trade-offs of increased incarceration and the following relevant AOJ Policy Platform positions:

- Given that local and state corrections systems are interconnected, true reform must consider the advantage—if not necessity—of investing in local programs and services to help the state reduce the rate of growth in the prison population.

- A shared commitment to rehabilitation can help address the inextricably linked challenges of recidivism and facility overcrowding. The most effective method of rehabilitation is one that maintains ties to an offender's community.

Additionally, each year state savings from the implementation of Proposition 47 is required to be transferred and re-allocated in grant programs, as specified in the initiative. The Budget

estimates total state savings of $102.9 million for 2019-20. Proposition 20 could reduce state savings made available for these grant programs.

Proposition 57 (NEUTRAL): CSAC was "neutral" on Proposition 57. While Proposition 57 largely focuses on the management of the state prison and offender population, the decisions the state makes in implementing Proposition 57 undoubtedly impact counties due to the overall criminal justice continuum and close ties between the two systems. As cited above, the AOJ Policy Platform includes language related to helping the state reduce the rate of growth in the prison population and overcrowding.

Staff Contact

Please contact Josh Gauger at jgauger@counties.org or Stanicia Boatner at sboatner@counties.org.

Resources

1) Title and Summary
2) Full text of Ballot Initiative
3) Fiscal Analysis by Legislative Analyst's Office

BALLOT TITLE AND SUMMARY

RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.

- Limits access to parole program established for non-violent offenders who have completed the full term of their primary offense by eliminating eligibility for certain offenses.
- Changes standards and requirements governing parole decisions under this program.
- Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between $250 and $950.
- Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily due to increases in county jail populations and levels of community supervision.
- Increased state and local court-related costs that could be more than several million dollars annually.
- Increased state and local law enforcement costs not likely to be more than a few million dollars annually related to collecting and processing DNA samples.

OFFICIAL TITLE AND SUMMARY PREPARED BY THE ATTORNEY GENERAL

SUBJECT TO COURT ORDERED CHANGES

Attachment A

17-0044 Amdt. # 1

Date: 11/14/2017

RECEIVED

NOV 28 2017

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative No. 17-0044 – Amendment # 1

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 17-0044. The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

For purposes of inquiries from the public and the media, please direct them as follows:

Charles H. Bell, Jr.
455 Capitol Mall, Suite 600
Sacramento, CA 95814
cbell@bmhlaw.com
(916) 442-7757

Thank you for your time and attention processing my request.

Sincerely,

Nina Salarno Besselman

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

SEC. 1. TITLE

This act shall be known and may be cited as the Reducing Crime and Keeping California Safe Act of 2018.

SEC. 2. PURPOSES

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:
A. Reform the parole system so violent felons are not released early from prison, strengthen oversight of post release community supervision and tighten penalties for violations of terms of post release community supervision;
B. Reform theft laws to restore accountability for serial thieves and organized theft rings; and
C. Expand DNA collection from persons convicted of drug, theft and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

SEC. 3. FINDINGS AND DECLARATIONS

A. Prevent Early Release of Violent Felons
1. Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters and other violent criminals should not be released early from prison.
2. Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.
3. Recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent offenders."
4. As a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge.
5. Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their post release community supervision, like the gang member charged with the murder of Whittier Police Officer, Keith Boyer.
6. Californians need better protection from such violent criminals.
7. Californians need better protection from felons who repeatedly violate the terms of their post release community supervision.
8. This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.
9. Californians need better protection from such violent criminals. This measure reforms the law to define such crimes as "violent felonies" for purposes of early release.

10. Nothing in this act is intended to create additional "strike" offenses which would increase the state prison population.
11. Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.
B. Restore Accountability for Serial Theft and Organized Theft Rings
1. Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.
2. As a result, between 2014 and 2016, California had the 2nd highest increase in theft and property crimes in the United States, while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was $2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least ten years.
3. Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges' ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.
4. California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.
C. Restore DNA Collection to Solve Violent Crime
1. Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes including murder, rape and robbery have gone unsolved because DNA is being collected from fewer criminals.
2. DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys that occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.
3. Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.
4. Permitting collection of more DNA samples will help identify suspects, clear the innocent and free the wrongly convicted.
5. This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or are found innocent.

SEC. 4. PAROLE CONSIDERATION

Section 3003 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
(a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.
(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of

parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:
(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.
(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.
(3) The verified existence of a work offer, or an educational or vocational training program.
(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.
(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.
(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.
(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.
(e)(1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:
(A) Last, first, and middle names.
(B) Birth date.
(C) Sex, race, height, weight, and hair and eye color.
(D) Date of parole or placement on postrelease community supervision and discharge.
(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.
(F) California Criminal Information Number, FBI number, social security number, and driver's license number.
(G) County of commitment.
(H) A description of scars, marks, and tattoos on the inmate.
(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.
(J) Address, including all of the following information:
(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.
(ii) City and ZIP Code.
(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.
(K) Contact officer and unit, including all of the following information:
(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.
(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.
(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.
(N) Copies of the record of supervision during any prior period of parole.
(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or his or her designee, determines that this provision is not preempted by HIPAA.
(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.
(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.
(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.
(f) Notwithstanding any other law, ~~an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9,~~ if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of ~~a victim or witness.~~ the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:
(1) A violent felony as defined subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.
(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.
(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-

half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.
(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.
(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.
(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).
(k)(1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include all records of supervision, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.
(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.
(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

Section 3040.1 is added to the Penal Code to read:
(a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of this Code and the rulemaking authority granted by Section 5058 of this Code, the following shall be defined as "violent felony offenses":
(1) Murder or voluntary manslaughter;

(2) Mayhem;
(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262;
(4) Sodomy as defined in subdivision (c) or (d) of Section 286;
(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a;
(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288;
(7) Any felony punishable by death or imprisonment in the state prison for life;
(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55;
(9) Any robbery;
(10) Arson, in violation of subdivision (a) or (b) of Section 451;
(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289;
(12) Attempted murder;
(13) A violation of Section 18745, 18750, or 18755;
(14) Kidnapping;
(15) Assault with the intent to commit a specified felony, in violation of Section 220;
(16) Continuous sexual abuse of a child, in violation of Section 288.5;
(17) Carjacking, as defined in subdivision (a) of Section 215;
(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1;
(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22;
(20) Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1;
(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;
(22) Any violation of Section 12022.53;
(23) A violation of subdivision (b) or (c) of Section 11418;
(24) Solicitation to commit murder;
(25) Felony assault with a firearm in violation of subsections (a)(2) and (b) of Section 245;
(26) Felony assault with a deadly weapon in violation of paragraph (1) of subdivision (a) of Section 245;
(27) Felony assault with a deadly weapon upon the person of a peace officer or firefighter in violation of subdivisions (c) and (d) of Section 245;
(28) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;
(29) Assault with caustic chemicals in violation of Section 244;
(30) False imprisonment in violation of Section 210.5;
(31) Felony discharging a firearm in violation of Section 246;
(32) Discharge of a firearm from a motor vehicle in violation of subsection (c) of Section 26100;
(33) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;
(34) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;

(35) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;
(36) A felony hate crime punishable pursuant to Section 422.7;
(37) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;
(38) Rape in violation of paragraphs (1), (3), or (4) of subdivision (a) of Section 261;
(39) Rape in violation of Section 262;
(40) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;
(41) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;
(42) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;
(43) Abduction of a minor for purposes of prostitution in violation of Section 267;
(44) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;
(45) Child abuse in violation of Section 273ab;
(46) Possessing, exploding, or igniting a destructive device in violation of Section 18740;
(47) Two or more violations of subsection (c) of Section 451;
(48) Any attempt to commit an offense described in this subdivision;
(49) Any felony in which it is pled and proven that the Defendant personally used a dangerous or deadly weapon;
(50) Any offense resulting in lifetime sex offender registration pursuant to Sections 290 through 290.009.
(51) Any conspiracy to commit an offense described in this Section.
(b) The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.

Section 3040.2 is added to the Penal Code to read:
(a) Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole Hearings shall consider all relevant, reliable information about the inmate.
(b) The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.
(c) In reaching this determination, the hearing officer shall consider the following factors:
(1) Circumstances surrounding the current conviction;
(2) The inmate's criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented;
(3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct;
(4) Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies;
(5) The inmate's past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation;
(6) The inmate's past and present attitude about the crime;
(7) Any other information which bears on the inmate's suitability for release.
(d) The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:
(1) Multiple victims involved in the current commitment offense;
(2) A victim was particularly vulnerable due to age or physical or mental condition;
(3) The inmate took advantage of a position of trust in the commission of the crime;

(4) The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime;
(5) A victim suffered great bodily injury during the commission of the crime;
(6) The inmate committed the crime in association with a criminal street gang;
(7) The inmate occupied a position of leadership or dominance over other participants in the commission of the crime, or the inmate induced others to participate in the commission of the crime;
(8) During the commission of the crime, the inmate had a clear opportunity to cease but instead continued;
(9) The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison;
(10) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;
(11) The inmate was on probation, parole, post release community supervision, mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense;
(12) The inmate was on any form of pre- or post-conviction release at the time of the commitment offense;
(13) The inmate's prior history of violence, whether as a juvenile or adult;
(14) The inmate has engaged in misconduct in prison or jail;
(15) The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.
(e) The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:
(1) The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims;
(2) The inmate lacks any history of violent crime;
(3) The inmate has demonstrated remorse;
(4) The inmate's present age reduces the risk of recidivism;
(5) The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release;
(6) The inmate's institutional activities demonstrate an enhanced ability to function within the law upon release;
(7) The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense;
(8) The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission;
(9) The inmate has a minimal or no criminal history;
(10) The inmate was a passive participant or played a minor role in the commission of the crime;
(11) The crime was committed during or due to an unusual situation unlikely to reoccur.

Section 3040.3 is added to the Penal Code to read:
(a) An inmate whose current commitment includes a concurrent, consecutive or stayed sentence for an offense or allegation defined as violent by subdivision (c) of Section 667.5 or 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(b) An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
(c) An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
(d) For purposes of Section 32 of Article I of the Constitution, the "full term" of the "primary offense" shall be calculated based only on actual days served on the commitment offense.

Section 3040.4 is added to the Penal Code to read:
Pursuant to subsection (b) of Section 28 of Article I of the Constitution, the Department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The Department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The Department shall consider the safety of the victims, the victims' family, and the general public when making a determination on early release.
(a) Prior to conducting a review for early parole, the Department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.
(b) The prosecuting agency shall have the right to review all information available to the hearing officer including, but not limited to the inmate's central file, documented adult and juvenile criminal history, institutional behavior including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.
(c) A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.
(d) All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.
(e) Responses to the Board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate's eligibility for early parole review or consideration.
(f) The Board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the Nonviolent Offender Parole decision within 10 days of the decision being made.
(g) Within 30 days of the notice of the final decision concerning Nonviolent Offender Parole Consideration, the inmate and the prosecuting agencies may request review of the decision.
(h) If an inmate is denied early release under the Nonviolent Offender Parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early Nonviolent Offender parole consideration for two (2) calendar years from the date of the final decision of the previous denial.

Section 3041 of the Penal Code is amended to read:
[language added to an existing section of law is designated in <u>underlined</u> type and language deleted is designated in ~~strikeout~~ type]
(a)(1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole

eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligibility date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b)(1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings

will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

Section 3454 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.

(c) As used in this title, "flash incarceration" is a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary

more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.
(d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

Section 3455 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
(a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, or if the supervised person has violated the terms of his or her release for a third time, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:
(1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
(2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.
(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.
(b) (1) At any time during the period of postrelease community supervision, if a peace officer, including a probation officer, has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.
(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.

(3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.
(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.
(d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.
(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 5. DNA COLLECTION

Section 296 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
(a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:
(1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.
(2) Any adult person who is arrested for or charged with any of the following felony offenses:
(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.
(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.
(C) Commencing on January 1, 2009, any adult person arrested or charged with any felony offense.
(3) Any person, including any juvenile, who is required to register under Section 290 through 290.009 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.

(4) Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:
(A) A misdemeanor violation of Section 459.5;
(B) A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473;
(C) A violation of subdivision (a) of Section 476a that is punishable as a misdemeanor pursuant to subdivision (b) of Section 476a;
(D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2;
(E) A violation of Section 496 that is punishable as a misdemeanor;
(F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code;
(G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code;
(H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243;
(I) A misdemeanor violation of Section 273.5;
(J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368;
(K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code;
(L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.
~~(4)~~(5) The term "felony" as used in this subdivision includes an attempt to commit the offense.
~~(5)~~(6) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.
(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.
(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:
(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.
(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.
(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.
However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 6. SHOPLIFTING

Section 459.5 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to ~~commit larceny~~ steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.
(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.
(c) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.
(d) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.
(e) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

Section 490.2 of the Penal Code is amended to read:
[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.
(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.
(c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

SEC. 7. SERIAL THEFT

Section 490.3 is added to the Penal Code to read:
(a) This section applies to the following crimes:
(1) petty theft;
(2) shoplifting;
(3) grand theft;
(4) burglary;
(5) carjacking;
(6) robbery;
(7) a crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368;
(8) any violation of Section 496;
(9) unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.
(10) Forgery.
(11) The unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e.
(12) Forgery of an access card pursuant to Section 484f.
(13) The unlawful use of an access card pursuant to Section 484g.
(14) Identity theft pursuant to Section 530.5.
(15) The theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.
(b) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal

property taken exceeds two hundred fifty dollars ($250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.
(c) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 8. ORGANIZED RETAIL THEFT

Section 490.4 is added to the Penal Code to read:
(a) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.
(b) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.
(c) Any person, who, acting in concert with one or more other persons, commits two (2) or more thefts pursuant to Sections 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars ($250) and unlawfully takes such property during a period of one hundred eighty days (180) is guilty of organized retail theft.
(d) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.
(e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.
(f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.
(g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 9. AMENDMENTS

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings and declarations of the Act and is passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 10. SEVERABILITY

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 11. CONFLICTING INITIATIVES

(a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and post release community supervision, DNA collection, or theft offenses 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.

Proposition 20
Restricts Parole for Non-Violent Offenders. Authorizes Felony Sentences for Certain Offenses Currently Treated Only as Misdemeanors. Initiative Statute.

OVERVIEW

Proposition 20 has four major provisions. It:

- Changes state law to increase criminal penalties for some theft-related crimes.
- Changes how people released from state prison are supervised in the community.
- Makes various changes to the process created by Proposition 57 (2016) for considering the release of inmates from prison.
- Requires state and local law enforcement to collect DNA from adults convicted of certain crimes.

Below, we discuss each of these major provisions and describe the fiscal effects of the proposition.

CRIMINAL PENALTIES FOR CERTAIN THEFT-RELATED CRIMES

Background

A felony is the most severe type of crime. State law defines some felonies as "violent" or "serious," or both. Examples of felonies defined as violent and serious include murder, robbery, and rape. Felonies that are not defined as violent or serious include human trafficking and selling drugs. A misdemeanor is a less severe crime. Misdemeanors include crimes such as assault and public drunkenness.

Felony Sentencing. People convicted of felonies can be sentenced as follows:

- ***State Prison.*** People whose current or past convictions include serious, violent, or sex crimes can be sentenced to state prison.
- ***County Jail and/or Community Supervision.*** People who have no current or past convictions for serious, violent, or sex crimes are typically sentenced to county jail or are supervised by county probation officers in the community, or both.

Misdemeanor Sentencing. People convicted of misdemeanors can be sentenced to county jail, county community supervision, a fine, or some combination of the three. They are generally punished less than people convicted of felonies. For example, a misdemeanor sentence cannot exceed one year in jail while a felony sentence can require a much longer time in jail or prison. In addition, people convicted of misdemeanors are usually supervised in the community for fewer years and may not be supervised as closely by probation officers.

Wobbler Sentencing. Currently, some crimes—such as identity theft—can be punished as either a felony or a misdemeanor. These crimes are known as "wobblers." The decision is generally based on the specifics of the crime and a person's criminal history.

Proposition 47 Reduced Penalties for Certain Crimes. In November 2014, voters approved Proposition 47, which resulted in certain theft-related crimes being punished as misdemeanors instead of felonies. For example, under Proposition 47, theft involving property worth $950 or less is generally considered petty theft and punished as a misdemeanor—rather than as a felony as was sometimes possible before (such as if a car was stolen). Proposition 47 also generally requires that shoplifting involving $950 or less be punished as a misdemeanor—rather than a felony as was possible before.

Proposal

Increases Penalties for Certain Theft-Related Crimes. Proposition 20 creates two new theft-related crimes:

- ***Serial Theft.*** Any person with two or more past convictions for certain theft-related crimes (such as burglary, forgery, or carjacking) who is found guilty of shoplifting or petty theft involving property worth more than $250 could be charged with serial theft.
- ***Organized Retail Theft.*** Any person acting with others who commits petty theft or shoplifting two or more times where the total value of property stolen within 180 days exceeds $250 could be charged with organized retail theft.

Both of these new crimes would be wobblers, punishable by up to three years in county jail, even if the person has a past conviction for a serious, violent, or sex crime.

In addition, Proposition 20 allows some existing theft-related crimes that are generally punished as misdemeanors under Proposition 47 to be punished as felonies. For example, under current law, theft of all property worth less than $950 from a store is generally required to be punished as a misdemeanor. Under Proposition 20, people who steal property worth less than $950 that is not for sale (such as a cash register) from a store could receive felony sentences. This could increase the amount of time people convicted of these crimes serve. For example, rather than serving up to six months in county jail, they could serve up to three years in county jail or state prison.

We estimate that a few thousand people could be affected by the above changes each year. However, this estimate is based on the limited data available, and the actual number of people

affected would depend on choices made by prosecutors and judges. As a result, the actual number could be significantly higher or lower.

COMMUNITY SUPERVISION PRACTICES

Background

People who are released from state prison after serving a sentence for a serious or violent crime are supervised for a period of time in the community by state parole agents. People who are released from prison after serving a sentence for other crimes are usually supervised in the community by county probation officers—commonly referred to as Post-Release Community Supervision (PRCS). When people on state parole or PRCS break the rules that they are required to follow while supervised—referred to as breaking the "terms of their supervision"—state parole agents or county probation officers can choose to ask a judge to change the terms of their supervision. This can result in harsher terms or placement in county jail.

Proposal

Changes Community Supervision Practices. This proposition makes various changes to state parole and PRCS practices. For example, it requires probation officers to ask a judge to change the terms of supervision for people on PRCS if they have violated them for a third time. In addition, the proposition requires state parole and county probation departments to exchange more information about the people they supervise.

PROPOSITION 57 RELEASE CONSIDERATION PROCESS

Background

People in prison have been convicted of a primary crime. This is generally the crime for which they receive the longest amount of time in prison. They often serve additional time due to

the facts of their cases (such as if they used a gun) or for other, lesser crimes they were convicted of at the same time. For example, people previously convicted of a serious or violent crime generally must serve twice the term for any new felony they commit.

In November 2016, voters approved Proposition 57, which changed the State Constitution to make prison inmates convicted of nonviolent felonies eligible to be considered for release after serving the term for their primary crimes. Inmates are considered for release by the state Board of Parole Hearings (BPH). Specifically, a BPH staff member reviews various information in the inmate's files, such as criminal history and behavior in prison, to determine if the inmate will be released. BPH also considers any letters submitted by prosecutors, law enforcement agencies, and victims about the inmate. The California Department of Corrections and Rehabilitation (CDCR) contacts victims registered with the state to notify them that they can submit such letters. The inmate is released unless BPH decides that the inmate poses an unreasonable risk of violence. If not released, the inmate can request a review of the decision. Inmates who are denied release are reconsidered the following year, though they often complete their sentences and are released before then. In 2019, BPH considered nearly 4,600 inmates and approved about 860 (19 percent) for release.

Proposal

Changes Proposition 57 Release Consideration Process. Proposition 20 makes various changes to the Proposition 57 release consideration process. The major changes are:

- Excluding some inmates from the process—such as those convicted of some types of assault and domestic violence.

- Requiring BPH to deny release to inmates who pose an unreasonable risk of committing felonies that result in victims, rather than only those who pose an unreasonable risk of violence.
- Requiring BPH to consider additional issues, such as the inmates' attitudes about their crimes, when deciding whether to release them.
- Requiring inmates denied release to wait two years (rather than one) before being reconsidered by BPH.
- Allowing prosecutors to request that BPH perform another review of release decisions.
- Requiring CDCR to try to locate victims to notify them of the review even if they are not registered with the state.

DNA COLLECTION

Background

In California, DNA samples must be provided by (1) adults arrested for, charged with, or convicted of a felony; (2) youth who have committed a felony; and (3) people required to register as sex offenders or arsonists. These samples are collected by state and local law enforcement agencies and submitted to the California Department of Justice (DOJ) for processing. DOJ currently receives roughly 100,000 DNA samples each year. DOJ stores the DNA profiles in a statewide DNA database and submits them to a national database. These databases are used by law enforcement to investigate crimes.

Proposal

Expands DNA Collection. This proposition requires state and local law enforcement to also collect DNA samples from adults convicted of certain misdemeanors. These crimes include shoplifting, forging checks, and certain domestic violence crimes.

FISCAL EFFECTS

The proposition would have various fiscal effects on state and local government. However, the exact size of the effects discussed below would depend on several factors. One key factor would be decisions made by the courts and others (such as county probation departments and prosecutors) about how the proposition would be implemented. For example, the proposition seeks to change certain inmates' constitutional eligibility to be considered for release under Proposition 57 without changing the State Constitution. If the proposition were challenged in court, a judge might rule that certain provisions cannot be put into effect. Our estimates below of the fiscal effects on state and local government assume that the proposition is fully implemented. In total, the estimated increase in state costs reflects less than one percent of the state's current General Fund budget. (The General Fund is the state's main operating account, which it uses to pay for education, prisons, health care, and other services.)

State and Local Correctional Costs. The proposition would increase state and local correctional costs in three ways.

- First, the increase in penalties for theft-related crimes would increase correctional costs mostly by increasing county jail populations and the level of community supervision for some people.

- Second, the changes to community supervision practices would increase state and local costs in various ways. For example, the requirement that county probation officers seek to change the terms of supervision for people on PRCS who violate them for a third time could increase county jail populations if this causes more people to be placed in jail.
- Third, the changes made to the Proposition 57 release consideration process would increase state costs by reducing the number of inmates released from prison and generally increasing the cost of the process.

We estimate that more than several thousand people would be affected by the proposition each year. As a result, we estimate that the increase in **state and local correctional costs would likely be in the tens of millions of dollars annually**. The actual increase would depend on several uncertain factors, such as the specific number of people affected by the proposition.

State and Local Court-Related Costs. The proposition would increase state and local court-related costs. This is because it would result in some people being convicted of felonies for certain theft-related crimes instead of misdemeanors. Because felonies take more time for courts to handle than misdemeanors, workload for the courts, county prosecutors and public defenders, and county sheriffs (who provide court security) would increase. In addition, requiring probation officers to ask judges to change the terms of supervision for people on PRCS after their third violation would result in additional court workload. We estimate that these **court-related costs could be more than several million dollars annually**, depending on the actual number of people affected by the proposition.

State and Local Law Enforcement Costs. The proposition would increase state and local law enforcement costs by expanding the number of people who are required to provide DNA samples, possibly by tens of thousands annually. We estimate that the increase in **state and local law enforcement costs would likely not be more than a few million dollars annually.**

Other Fiscal Effects. There could be other unknown fiscal effects on state and local governments due to the proposition. For example, if the increase in penalties reduces crime, some criminal justice system costs could be avoided. The extent to which this or other effects would occur is unknown.