



FEBRUARY 2016 | BY SCOTT GRAVES

Governor's Estimate of State Savings From Proposition 47 Raises Questions

In early January, Governor Jerry Brown released his administration's most recent estimate of state savings from Proposition 47, a 2014 ballot measure that lowered penalties for certain drug and property crimes and thereby reduced the number of adults incarcerated by the state. The Governor's current savings estimate for 2015-16, \$29.3 million, is dramatically lower than earlier estimates, which anticipated state savings in the low hundreds of millions of dollars per year. The Administration's estimate is significant because it will determine how much state funding is directed to mental health and drug treatment programs, K-12 public school programs for at-risk youth, and trauma recovery services for crime victims as required by Prop. 47. This *Issue Brief* describes Prop. 47, reviews the Governor's most recent estimate of state savings from the measure, and highlights several questions that provide a starting point for evaluating the data and assumptions that underpin the Governor's estimate.

Proposition 47 Reduced Penalties for Certain Crimes and Requires the Governor to Estimate the Resulting Savings to the State

Proposition 47 – a ballot initiative approved by voters in November 2014 – reduced penalties for several nonviolent drug and property crimes from felonies to misdemeanors.¹ As a result, state prison generally is not a sentencing option for these crimes.² In addition, people who were serving a felony sentence for these crimes at the time of Prop. 47's passage generally can petition the court to have their sentence reduced to a misdemeanor term.³ Individuals who qualify for resentencing receive credit for time served and are released to state parole following the completion of their reduced sentence.⁴

Prop. 47 requires the Governor's Department of Finance (DOF) to annually – beginning in 2015-16 – calculate the state savings resulting from a decrease in incarceration and other factors. (Savings

are calculated relative to 2013-14, the fiscal year before Prop. 47 took effect.) The measure does not prescribe a specific methodology for calculating the savings. While the Governor may release interim estimates, the final state savings calculation must be certified by the DOF no later than August 1 of each year. Annual state savings must be deposited into the Safe Neighborhoods and Schools Fund and allocated as follows: 65 percent to mental health and drug treatment programs, 25 percent to K-12 public school programs for at-risk youth, and 10 percent to trauma recovery services for crime victims.

The Governor Recently Released an Estimate of State Savings From Proposition 47

In early January, Governor Brown released his administration's most recent estimate of state savings attributable to Prop. 47 during 2015-16, the current fiscal year. This estimate – \$29.3 million – is a *net* savings amount that reflects reduced state spending as well as offsetting new state costs.⁵

- **Reduced state spending.** The Administration estimates that in 2015-16, Prop. 47 will reduce the average daily number of adults incarcerated by the state by 4,712, resulting in state correctional savings of \$52.2 million. The Governor estimates an additional \$10.5 million in state savings from two other changes: an overall drop in court filings and a reduced patient population at state hospitals.
- **New state costs.** The Administration estimates new state costs of \$33.4 million in 2015-16 related to Prop. 47's resentencing provisions. This amount reflects increased spending for both courts (\$26.9 million) and state parole (\$6.5 million).

In addition, the DOF projects that net state savings will increase to \$40.4 million in 2016-17 and top out at approximately \$57 million in 2017-18 and subsequent fiscal years.

The Governor's Current Proposition 47 Savings Estimate Is Dramatically Lower Than Previous Estimates

The Governor's estimate of state savings from Prop. 47 – \$29.3 million in 2015-16, topping out at roughly \$57 million in 2017-18 and beyond – is far below previous estimates, including the DOF's own initial projection that was published two years ago. As required by state law, the DOF and the nonpartisan Legislative Analyst's Office (LAO) jointly released an analysis of Prop. 47 in January 2014, roughly nine months before the measure appeared on the statewide ballot.⁶ This DOF/LAO analysis projected that "net state criminal justice system savings ... could reach *the low hundreds of millions of dollars* annually" [emphasis added].⁷ The LAO later reported – in early 2015 – that annual state savings from Prop. 47 "will likely range from \$100 million to \$200 million."⁸ These earlier estimates are far higher than the \$29 million to \$57 million range that is currently estimated by the DOF.

Key Questions About the Governor's Proposition 47 Savings Estimate

The following questions, which are based on a preliminary review of the Administration's methodology, provide a starting point for evaluating the Governor's current Prop. 47 savings estimate:

Why does the Administration use a "blended" per capita rate – rather than the much higher "contract bed" rate – to calculate the state savings from reduced incarceration?

Most adults incarcerated by the state are housed in California's 34 state prisons. However, in order to maintain the prison population below the cap imposed by a federal three-judge panel, the state houses many adults – currently more than 10,000 – in alternative facilities located in California and other states.⁹ In other words, the state contracts for space because state prisons cannot accommodate additional individuals given the court-imposed population limit. Consequently, reductions in the number of adults incarcerated by the state first and foremost reduce the state's need to contract for bed space. The annual cost of "contract beds" is \$28,726 per person, more than triple the \$9,253 annual "marginal" cost of housing an adult in a state prison.¹⁰

However, rather than using the contract bed rate to calculate the portion of state savings that come from reduced incarceration under Prop. 47, the DOF uses a "blended" rate that is based almost entirely on the much lower marginal cost of housing individuals in a state prison.¹¹ The DOF estimates state savings of \$52.2 million from reduced incarceration in 2015-16 using this blended rate. In contrast, strictly using the contract bed rate would result in state savings from reduced incarceration of \$135 million in 2015-16 – more than twice the level of savings assumed in the DOF's estimate.¹² In effect, the DOF's decision to use a blended rate dramatically *lowers* the estimated

savings that accrue to the state as a result of reduced incarceration under Prop. 47.

It is unclear why the Administration has chosen to create a blended rate rather than basing the savings calculation strictly on the contract bed rate. In fact, there is a clear precedent in state law for using the contract bed rate as the basis for calculating savings from reduced incarceration. Specifically, the state's "SB 678 program" uses the contract bed rate to help determine the amount of state funding that counties receive for reducing the number of locally supervised adults who are sent to state prison.¹³ This SB 678 calculation explicitly recognizes that reducing the number of adults under state custody decreases the state's need for expensive contract beds. However, the Administration has chosen *not* to apply this same standard in calculating the state savings from reduced incarceration under Prop. 47.

What is the basis for the Administration's expectation that Prop. 47 will reduce the number of adults incarcerated by the state by less than 5,000 in 2015-16?

Prop. 47 and certain other changes are projected to reduce by about 8,700 the average daily number of adults incarcerated by the state in 2015-16, according to the Administration.¹⁴ Of this total reduction, 4,712 (54 percent) is attributed to Prop. 47.¹⁵ Given the magnitude of Prop. 47's impact on the state corrections system, some observers may question why Prop. 47 is not credited with a larger share of the total reduction under the Administration's methodology. The Governor has not released an explanation of this analysis, so it is not clear how his administration developed this estimate.

What is the basis for the Administration's conclusion that California contracted for just 10,800 "beds" outside of the state prison system in 2013-14, the base year for calculating state savings from Prop. 47?

This number is important because it partly determines the amount of state savings from Prop. 47 under the DOF's current methodology. A higher

contract bed figure for 2013-14 would produce a larger Prop. 47 savings estimate, other things being equal. Based on monthly population reports from the California Department of Corrections and Rehabilitation (CDCR), it appears that the state used an average of 11,741 contract beds during 2013-14.¹⁶ In contrast, the Administration indicates that the state used 10,816 contract beds during this period.¹⁷ The Governor has not released any details regarding this figure, so the reason for this 925-bed discrepancy is not clear.

What is the basis for the expectation that Prop. 47's resentencing provisions will increase costs for the state court system by \$26.9 million in 2015-16?

This number is important because it offsets a large portion of the total state savings attributable to Prop. 47 in 2015-16. At the time of Prop. 47's passage, courts were expected to experience "a one-time increase in costs resulting from the resentencing of offenders and from changing the sentences of those who have already completed their sentences."¹⁸ In fact, the 2015-16 state budget, as enacted last June, included a General Fund appropriation of \$26.9 million "to reflect a projected increase in trial court workload."¹⁹ However, more than halfway through the 2015-16 fiscal year, the DOF's current estimate of trial court costs attributable to Prop. 47 continues to rely on this seven-month-old projection. In other words, it appears that neither the Administration nor the Judicial Council – the policymaking body of the courts – has updated the \$26.9 million cost estimate to reflect the trial courts' actual experience with implementing Prop. 47's resentencing provisions.

Looking Ahead

The Governor's estimate of overall state savings from Prop. 47 is significant because it will determine how much funding is available in the coming fiscal year for mental health and drug treatment programs, K-12 public school programs for at-risk youth, and trauma recovery services for crime victims. Such services

are critical to stopping cycles of crime and reducing California's over-reliance on costly state prisons. Unfortunately, the Governor's current state savings estimate – \$29.3 million in 2015-16 – is dramatically lower than earlier estimates (including the Administration's own projection from early 2014) and provides much less funding than is needed to create and maintain strong, safe, and healthy communities.

The questions raised in this *Issue Brief* provide a starting point for examining the data and assumptions that underpin the Governor's current Prop. 47 savings estimate. State legislators can play a key role in any

such analysis by scrutinizing the Administration's estimate as they craft the 2016-17 state budget. In addition, the nonpartisan Legislative Analyst's Office – which last year projected much higher state savings from Prop. 47 in the range of \$100 million to \$200 million per year – is likely to weigh in with its own assessment of the Governor's estimate. While Prop. 47 provides the Administration with sole authority to determine how state savings are calculated, the Governor could decide to revise his current methodology and recognize a higher level of state savings as part of the normal deliberations of the state budget process.

Scott Graves prepared this *Issue Brief*. The California Budget & Policy Center was established in 1995 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The Budget Center engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the Budget Center is provided by foundation grants, subscriptions, and individual contributions. Please visit the Budget Center's website at calbudgetcenter.org.

ENDNOTES

- ¹ Some of the crimes that were reclassified by Prop. 47 were "wobblers." A wobbler is a crime that can be charged either as a felony or a misdemeanor at the discretion of the prosecutor and the court. See California Penal Code, Section 17(b).
- ² An individual who has a prior conviction for a serious and/or violent offense, as specified by Prop. 47, or for any registerable sex offense would not qualify for a reduced sentence under Prop. 47. As a result, people who fall into this category could be sentenced to state prison if convicted of one of the offenses covered by the measure.
- ³ An individual who has a prior conviction for a serious and/or violent offense, as specified by Prop. 47, or for any registerable sex offense would be ineligible to petition for resentencing.
- ⁴ The requirement for state parole supervision can be waived at the discretion of the court.
- ⁵ The following data are from Department of Finance, *Proposition 47 Savings Estimate (2016-17 Governor's Budget)* (January 7, 2016). This document was provided by the DOF via email.
- ⁶ Section 9005 of the California Elections Code requires the DOF and the LAO to jointly estimate the fiscal impact of proposed ballot initiatives on state or local governments.
- ⁷ This joint DOF/LAO analysis was published on January 30, 2014, and is available on the LAO's website at <http://lao.ca.gov/ballot/2013/130764.pdf>.
- ⁸ Legislative Analyst's Office, *The 2015-16 Budget: Implementation of Proposition 47* (February 2015), p. 20.
- ⁹ In August 2009, a panel of federal judges ruled that overcrowding was the main reason that California was failing to provide prisoners with health care that met US constitutional standards. This three-judge panel ordered the state to reduce the prison population to 137.5 percent of the system's "design capacity," a decision that was upheld by the US Supreme Court in 2011. The court subsequently extended the state's deadline for complying with this order to February 28, 2016. For an overview of the three-judge panel's order, see Legislative Analyst's Office, *The 2014-15 Budget: Administration's Response to Prison Overcrowding Order* (February 28, 2014), pp. 2-3.

- 10 These figures were provided by the DOF via email. "Marginal cost" is defined by one research organization as "the amount the total cost changes when a unit of output [or workload] changes. ... In the context of the criminal justice system, the marginal cost is the amount of change in an agency's total operating costs when output (such as arrests, court filings, or jail days) changes because of changes to policies or programs." Christian Henrichson and Sarah Galgano, *A Guide to Calculating Justice-System Marginal Costs* (Vera Institute of Justice: May 2013), pp. 4-5.
- 11 The analysis in this paragraph is based on data that the DOF provided via email.
- 12 The Budget Center's \$135 million estimate for 2015-16 is based on the following calculation: 4,712 (the Administration's estimate of the reduction in the average daily number of inmates attributable to Prop. 47) * \$28,726 (the contract bed rate per offender).
- 13 This program, which annually shares state savings from reduced prison costs with counties, was established by Senate Bill 678 (Leno, Chapter 608 of 2009). The funding that counties receive is based, in part, on "the cost to the state to incarcerate in a contract facility ... an offender who fails local supervision and is sent to prison" [emphasis added]. California Penal Code, Section 1233.1(a). For an overview of the SB 678 program, see Judicial Council of California, *Report on the California Community Corrections Performance Incentives Act of 2009: Findings From the SB 678 Program* (July 2015).
- 14 Department of Finance, *Governor's Budget Summary 2016-17* (January 2015), pp. 78-79.
- 15 Department of Finance, *Proposition 47 Savings Estimate (2016-17 Governor's Budget)* (January 7, 2016). This document was provided by the DOF via email.
- 16 This figure reflects an average of the combined in-state and out-of-state beds for which the state contracted on the last day of each month during the 2013-14 fiscal year (i.e., July 31, 2013; August 31, 2013; September 30, 2013; etc.). CDCR population reports are available at: http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html.
- 17 This number was provided by the DOF via email.
- 18 Legislative Analyst's Office, "Proposition 47: Criminal Sentences. Misdemeanor Penalties. Initiative Statute," in Secretary of State's Office, *California General Election Tuesday November 4, 2014: Official Voter Information Guide*, p. 37.
- 19 Department of Finance, *California 2015-16 State Budget* (June 2015), p. 50.