

# Measure B269

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## **INSTRUCTIONS:**

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This measure is quite long and may take you as long as 15 minutes to read.

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## **BALLOT MEASURE B269**

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### **SUMMARY**

This measure (1) expands drug treatment diversion programs for criminal offenders, (2) modifies parole supervision procedures and expands prison and parole rehabilitation programs, (3) allows inmates to earn additional time off their prison sentences for participation and performance in rehabilitation programs, (4) reduces certain penalties for marijuana possession, and (5) makes miscellaneous changes to state law related mainly to state administration of rehabilitation and parole programs for offenders. Each of these proposals is discussed separately below as well as their combined fiscal effects on the state and local governments.

### **PROPOSALS**

#### **Expansion of Drug Treatment Diversion Programs**

##### **Background**

**Probation and Parole.** Currently, courts can place both adult and juvenile offenders under supervision in the community, where they must meet certain requirements, such as reporting on a regular basis to authorities. Offenders supervised by county authorities are “on probation.” Offenders who have completed a prison sentence and who are supervised by the state are “on parole.”

**Three Types of Crimes.** Under current state law, there are three basic kinds of crimes: felonies, misdemeanors, and infractions. A felony, the most severe type of crime, can result in a sentence to state prison, county jail, a fine, supervision on county probation in the community, or some combination of these punishments. Some felonies are designated in statute as violent or serious crimes that can result in additional punishment, such as a longer term in state prison. Misdemeanors are considered less serious and can result in a jail term, probation, a fine, or release to the community without probation but with certain conditions imposed by the court. State law defines certain drug crimes as “nonviolent drug possession offenses,” which can be either felonies or misdemeanors. Infractions, which include violations of certain traffic laws, do not result in a prison or jail sentence.

**State Prison System.** The state operates 33 state prisons and other facilities that had a combined adult inmate population of about 171,000 as of May 2008. The costs to operate the California Department of Corrections and Rehabilitation (CDCR) in 2008-09 are estimated to be approximately \$10 billion. The average annual cost to incarcerate an inmate is estimated to be about \$46,000. The state prison system is currently experiencing overcrowding because there are not enough permanent beds available for all inmates. As a result, gymnasiums and other rooms have been converted to house some inmates.

## **New Adult Diversion Programs Established**

**Three-Track System.** Currently, several programs permit criminal offenders who have committed drug-related offenses, or who have substance abuse problems, to be diverted from prison or jail to other forms of punishment. (These programs are described in the nearby text box.) This measure expands and largely replaces these existing programs with a new three-track drug treatment diversion program. Figure 1 summarizes which offenders are eligible for each track and their period of participation.

**General Effect of These Changes.** In general, the new Tracks I, II, and III would expand the types of offenders who are eligible for diversion, and expand and intensify the services provided to offenders mainly by increasing the funding available to pay for them. While participants in existing Penal Code 1000 programs must usually pay the out-of-pocket cost of their drug treatment, this measure generally provides funding to counties for participants in treatment under Track I, as well as other tracks. Offenders in all three tracks would generally receive the same types of drug treatment services that assessments determined they needed. This could include treatment in clinics or residential facilities, the dispensing of medication such as methadone, or the provision of mental health services.

However, the three tracks would vary in eligibility requirements, period of participation, level of supervision, and when and how sanctions, such as incarceration in prison or jail, could be imposed on offenders who violate drug treatment diversion program rules or commit new drug-related offenses. The measure permits offenders who have failed in Track I to be shifted to Track II, where they may face more severe sanctions. Similarly, offenders who have failed in Track II may be moved to Track III, where more severe sanctions would be possible. This measure would also require follow-up hearings in court when an offender fails to begin assigned treatment. Finally, this measure would require the collection and publication of data, specified reports, and research into the effect of this measure and other drug policy issues.

**Funding Provisions.** The 2007-08 Budget Act appropriated \$100 million from the General Fund to the Substance Abuse Treatment Trust Fund (SATTF), which was initially created under Proposition H319 to support treatment programs and other allowable activities. This measure appropriates \$150 million from the General Fund to the SATTF for the second half of 2008-09 and \$460 million in 2009-10, increasing annually thereafter, adjusted for the cost of living and population. After monies are set aside for certain administrative and program costs, the measure designates 15 percent of the remainder for Track I programs, 60 percent for Track II programs, and 10 percent for Track III programs.

**Existing Drug Treatment Diversion Programs**

In general, state law authorizes three main types of drug treatment diversion programs for criminal offenders.

- **Penal Code 1000.** Under Penal Code 1000 and related statutes, certain drug possession offenders who have no prior drug offenses can be diverted to drug education or treatment programs, usually at their own expense, under a “deferred entry of judgment” arrangement. This means that the offender must plead guilty to the drug possession charges but that sentencing for the crime is suspended. If, after 18 months to three years, the offender successfully completes a drug treatment program and stays out of trouble, the charges against the offender are dismissed and the offense does not go on his or her record.
- **Proposition H319.** Proposition H319, a ballot measure approved by the voters in November 2000, established a drug treatment diversion program for offenders who are convicted of specific crimes designated as nonviolent drug possession offenses. Under Proposition H319, an offender can be sentenced to probation and treatment, instead of prison or jail. Some parole violators are also eligible for Proposition H319 diversion. Proposition H319 limits when and how sanctions, such as jail or prison time, are imposed on offenders who violate the conditions of their drug treatment programs or commit new drug possession crimes.
- **Drug Courts.** Under drug court programs operated for adult felons, certain offenders charged or convicted of various types of crimes, including drug offenses, are diverted to treatment in lieu of incarceration. Drug court participants are subject to regular monitoring by a court (as well as by probation officers and drug treatment providers), with judges generally given discretion as to when and how to impose sanctions if participants do not comply with drug program rules or commit new crimes.

A new 23-member state Treatment Diversion Oversight and Accountability Commission would be established under this measure to set program rules regarding the use and distribution of SATTF funds and the collection of data for required evaluations of the programs and program funding needs. The measure generally prohibits the state or counties from using SATTF funds to replace funds now used for the support of substance abuse treatment programs. In addition, it requires that other available private and public funding sources be used whenever possible to pay for treatment before monies from SATTF are spent for these treatment services.

This measure permits SATTF funds to be spent on so-called “harm reduction” drug therapies that “promote methods of reducing the physical, social, emotional and economic harms associated with drug misuse” and that also “are free of judgment or blame and directly involve the client in setting his or her own goals.”

**New Juvenile Treatment Program Established**

This measure creates a new county-operated program for nonviolent youth under age 18 deemed to be at risk of committing future drug offenses. The program would receive a set share of SATTF funding (15 percent, after certain implementation costs were deducted) that would be allocated to counties and could be used for various specified purposes, including drug treatment, mental health medication and counseling, family therapy, educational stipends for higher education, employment stipends, and transportation services.

Figure 1

**Proposition B269****Tracks I, II, and III—Eligibility and Period of Participation**

	<b>Eligibility Requirements</b>	<b>Time Period in Diversion</b>
<b>Track I</b>	<p><b>Who Is Included:</b></p> <ul style="list-style-type: none"> <li>Offender charged with nonviolent drug possession offenses who is eligible for deferred entry of judgment programs. A prosecutor would have the burden of proof to show that an offender was ineligible.</li> <li>Offender charged with one or more nonviolent drug possession offenses.</li> </ul> <p><b>Who Is Excluded:</b></p> <ul style="list-style-type: none"> <li>Offender would be excluded if he or she has (1) current or prior conviction for a violent or serious offense or (2) prior conviction for any felony within the prior five years. However, an offender with one prior conviction for a nonviolent drug possession offense would be eligible.</li> <li>Generally, an offender would be excluded if charged with a non-drug related offense, but a judge would have the discretion to allow participation.</li> </ul>	<ul style="list-style-type: none"> <li>6 to 18 months.</li> </ul>
<b>Track II</b>	<p><b>Who Is Included:</b></p> <ul style="list-style-type: none"> <li>Generally, offender convicted of a nonviolent drug possession offense who is sentenced to treatment and probation.</li> </ul> <p><b>Who Is Excluded:</b></p> <ul style="list-style-type: none"> <li>Cannot include offender eligible for Track I.</li> <li>Offender generally excluded if previously convicted of a violent or serious crime. However, an offender who, within the prior five years, had not been in prison and did not have certain felony or misdemeanor convictions would be eligible.</li> <li>Offender would be excluded if he or she possessed certain drugs while armed with a deadly weapon; or had five or more convictions for any types of offenses in the prior 30 months.</li> <li>Offender would generally be excluded if convicted of other felonies or misdemeanors at the same time as a new drug charge. However, a judge could declare an offender convicted of such a misdemeanor eligible for Track II diversion.</li> </ul>	<ul style="list-style-type: none"> <li>Generally up to 12 months.</li> <li>The court can order up to two, 6-month extensions, for a maximum of 24 months.</li> </ul>
<b>Track III</b>	<p><b>Who Is Included:</b></p> <ul style="list-style-type: none"> <li>Generally, offender committed a nonviolent drug possession offense, but was not eligible for Track II.</li> <li>Offender committed any other type of nonviolent offense eligible for Track III diversion for substance abuse or addiction.</li> <li>Offender excluded from Track II for having five or more criminal convictions within the prior 30 months would specifically be eligible for Track III.</li> </ul> <p><b>Who Is Excluded:</b></p> <ul style="list-style-type: none"> <li>Offender would generally be excluded from Track III if he or she committed a violent or serious felony. However, such an offender could be included if diversion of offender was sought by a district attorney.</li> </ul>	<ul style="list-style-type: none"> <li>Generally up to 18 months.</li> <li>The court can order up to two, 3-month extensions, for a maximum of 24 months.</li> </ul>

## Changes to State Parole and Rehabilitation Programs

This measure makes a number of changes to the state's current parole system, including new rules regarding parole terms, the return to custody of parole violators, and rehabilitation programs for offenders. Below, we briefly outline how the parole system works and how it would be affected by these provisions.

### Background

**Parole Terms.** Under current state law, offenders are released from prison and placed on parole for a set period of time, usually depending on the nature of the offense for which they were convicted. Most offenders are subject to a maximum three-year parole period, which can be extended under certain circumstances to four years, although they may be discharged earlier from

parole if they stay out of trouble after their release to the community. Offenders who have committed certain crimes, particularly violent sex crimes or murder, are subject to longer parole terms.

***Parole Revocations.*** Parolees who get in trouble after being released to the community can be returned to state prison in two different ways. One way is if they are prosecuted and convicted in the courts of a new crime--either a felony or a misdemeanor--and sentenced to an additional term in prison. Another way is through actions of parole authorities and the Board of Parole Hearings (BPH), a process referred to as revocation of parole, based on a finding that a parole violation has occurred. Revocation is an administrative process that does not involve any action by a court. In some cases, parole revocation involves violations by parolees that could constitute a crime. But parole revocation can also result from actions, such as failing to report to a parole office, that do not in themselves constitute a crime. These types of offenses are sometimes referred to as “technical” parole violations.

***Rehabilitation Programs for Offenders.*** The state currently provides substance abuse treatment, academic education, job training, and other types of programs for prison inmates and parolees in order to increase the likelihood of success in the community after their release from prison. However, due to funding limitations, space constraints, and in some cases security concerns, the state often does not now make such programs available to inmates and parolees. Also, the state does not directly provide services for offenders after they have been discharged from parole. However, some former parolees may qualify for public services, such as mental health or substance abuse treatment, that the state is helping to support.

## **New Limits on Parole Terms**

This measure reduces the parole term of some parolees but allows longer parole terms for others. It specifies that offenders whose most recent term in prison was for a drug or nonviolent property crime, and who did not have a serious, violent, street gang-related, or sex crime on their record, would be placed on parole supervision for six months. Under the measure, these same parolees could be placed on an additional six months of parole at minimal supervision levels if they failed to complete an appropriate rehabilitation program that was offered to them during the first six months.

This measure also provides longer parole terms for some offenders. Specifically, this measure changes from three to five years the parole terms for any offender whose most recent prison sentence was for a violent or serious felony (such as first-degree burglary or robbery). Some violent sex offenders and other parolees would continue to receive even longer parole terms as provided under existing law.

## **New Rules for Revocation of Parole Violators**

This measure requires that parole violations be divided into three types--technical violations, misdemeanors, and felonies--and generally prohibits certain parolees from being returned to state prison for technical or misdemeanor parole violations. This measure would allow revocation of parolees who committed felony violations of parole. It also permits revocation to state prison of

those committing technical or misdemeanor violations who were classified high-risk by CDCR, or have violent or serious offenses on their record.

Under this measure, certain parolees who commit parole violations could face such punishments as more frequent drug testing or community work assignments. Some parolees who hide, are repeat violators, or commit misdemeanor parole violations could serve jail time, which under the measure would be at the expense of the state. Parole violators could also be placed in rehabilitation programs.

## **Expansion of Rehabilitation Programs for Offenders**

This measure expands rehabilitation programs for inmates, parolees, and offenders who have been discharged from parole. As regards inmates, the measure requires that all inmates except those with life terms be provided with rehabilitation programs beginning at least 90 days before their scheduled release from prison. The measure directs CDCR to conduct an assessment of the inmate's needs as well as which programs would most likely result in his or her successful return to the community. Parolees are to be provided rehabilitation programs by CDCR tailored to the parolee's needs as determined in their assessment. Offenders would be permitted to request up to a year's worth of rehabilitation services within a year after they are discharged from parole. While these offenders would receive these services from county probation departments, all operational costs of the services would be reimbursed by CDCR under the terms of the measure.

## **Other Parole System Changes**

***Parole Reform Board Created.*** This measure creates a new 21-member Parole Reform Oversight and Accountability Board with authority to review, direct, and approve the rehabilitation programs and to set state parole policies.

***Costs Shifted to State for Drug Diversion of Parolees.*** Currently, some parolees who are diverted to drug treatment receive their treatment services from counties. This measure provides that either CDCR or counties could provide such treatment services for parolees, but that CDCR would have to pay any county operating costs for doing so.

***Pilot Programs for Parole Violators.*** This measure directs CDCR to establish pilot projects similar to drug courts (see earlier text box for description) to divert certain parolees who have committed parole violations to treatment and rehabilitation programs. Under the measure, the funding to carry out the programs could come either from the CDCR's budget or separate funding legislation.

***Changes in Parole Revocation Procedures.*** This measure requires that parolees receive notice of alleged violations of parole at a BPH hearing held within three business days of their being taken into custody. Consistent with current federal court orders, this measure amends state law to provide all such parolees a right to legal counsel at this hearing.

## **Credits for Performance in Rehabilitation Programs**

### **Background**

State law currently provides credits to certain prison inmates who participate in work, training, or education programs. These credits reduce the prison time the inmates must serve. (Credits can be taken away if an inmate commits disciplinary offenses while in prison.) Some offenders who are committed to prison for violent and serious crimes can earn only limited credits or can earn no credits at all. But a number of offenders are eligible to earn up to one day off their prison sentences for each day they participate in such programs. Offenders who agree to participate in such programs, but are not yet assigned to one, receive up to one day in credits for every three days they are in this situation.

### **Expanded Credits Permissible**

This measure would change state law to permit some inmates who were sentenced to prison for certain drug or nonviolent property crimes to earn more credits to reduce their prison terms than are permitted under current state law. The parole reform board established in this measure would be authorized to award additional credits based upon such factors as the inmate showing progress in completing rehabilitation programs. The measure does not specify nor limit the amount of such additional credits that could be awarded, but it does prohibit them from being awarded to any inmate who has ever been convicted of a violent or serious felony or certain sex crimes.

## **Change in Marijuana Possession Penalties**

### **Background**

Current state law generally makes the possession of less than 28.5 grams of marijuana by either an adult or a minor a misdemeanor punishable by a fine of up to \$100 (plus other penalties and fines that can bring the total cost to as much as \$370) but not jail. Possession of greater amounts of marijuana, or repeat offenses, can result in confinement in jail or a juvenile hall, greater fines, or both. Revenues generated from these fines (including the additional penalties) are distributed in accordance with state law to various specified state and county government programs.

### **Penalties for Marijuana Offenses Would Become Infraction**

This measure would make the possession of less than 28.5 grams of marijuana by either an adult or a minor an infraction (similar to a traffic ticket) rather than a misdemeanor. Adults would be subject, as they are today, to a fine of up to \$100. However, the additional penalties of any kind would be limited under this measure to an amount equal to the fine imposed. (For example, imposition of the maximum \$100 fine could result in an additional \$100 in penalties.) Persons under age 18 would no longer be subject to a fine for a first offense, but would be required to complete a drug education program. Also, under this measure, fines collected for marijuana possession would be deposited in a special fund to provide additional support of the new youth programs created by this measure.

## Miscellaneous Provisions

Other provisions of this measure:

- Reorganize the way CDCR's rehabilitation and parole programs are administered, and establish a new, second secretary of the department and a chief deputy warden for rehabilitation at each prison;
- Expand BPH from 17 to 29 commissioners;
- Require county jails to provide materials and strategies on drug overdose awareness and prevention to all inmates prior to their release;
- Specify that, except for parolees, adults in drug treatment programs would receive mental health services using funding from Proposition E296, a 2004 ballot measure approved by voters that expanded community mental health services.



**STOP!**

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.