

**Ballot Proposition I-32-2020**  
**Second Chances, Rehabilitation, and Public Safety Act**  
**Fiscal Analysis**

**Estimated Impact**

A.R.S. § 19-123E requires the Joint Legislative Budget Committee Staff to prepare a summary of 300 words or less on the fiscal impact of voter-initiative ballot measures. Proposition \_\_\_ would increase earned release credits for inmates in the state's Department of Corrections (ADC) prisons. The proposition would also provide judges additional discretion when sentencing individuals for nondangerous offenses and limit the definition of a repetitive offender for sentencing purposes.

The proposition has the potential to affect the level of the prison population. The increase in earned release credits could reduce that population. ADC estimates approximately 20,000 inmates would be released early within the first year of implementation. Some of these inmates would otherwise have been released within that first year under current statutory requirements.

In addition, the additional judicial discretion in sentencing for nondangerous offenses could lead to shorter sentences compared to current statutory requirements. The inmate level would also be affected by whether inmates released early reoffend and return to prison.

A decrease in the prison population level would not automatically reduce the Department of Corrections budget. The Legislature and Governor could respond to lower prisoner counts by eliminating prison beds, which in turn, could reduce staffing costs. The response to lower prisoner counts could also be to reallocate existing staff to improve the current ratio of correctional officers to inmates. To the extent that more prisoners are released, ADC will have additional Community Supervision costs on at least a one-time basis.

Since we do not know how many of the 20,000 inmates would have been released in the next year under current statute, we are unable to estimate most of the fiscal impact of the proposition.

The proposition would transfer \$12 million from the Medical Marijuana Fund on a one-time basis for administrative costs and a victims fund.

**Background**

A.R.S. § 41-1604.07 currently allows certain inmates to reduce the amount of time served in prison through "earned release credits." Depending on the nature of an inmate's conviction, statute requires inmates to successfully complete a major self-improvement program and achieve eighth-grade literacy prior to early release. In addition, A.R.S. § 41-1604.06 requires the Director of ADC to adopt additional rules for eligibility pertaining to such areas as a prisoner's work performance. Inmates with dates of offense prior to January 1, 1994 have different statutory eligibility rules, which in some cases prohibit the earning of earned release credits.

The current earned release credit is 1 day of early release for every 6 days served. This effectively requires an inmate to serve at least 85% of their sentence. Inmates may earn a total of 3 earned release days for every 7 days served if they are serving time for the possession or use of marijuana, a dangerous drug, a narcotic, or drug paraphernalia. In order to be eligible for these credits, the inmate must have successfully completed a drug treatment program or other major self-improvement program and have no previous violent or aggravated felony conviction. This effectively requires these inmates to serve at least 70% of their sentence.

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## Analysis

### Earned Release Credits

The proposition would create a new 2-tiered earned release credit system for dangerous and nondangerous crimes. The proposition effectively defines a dangerous offense as one of the following:

- a. An offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.
- b. Child molestation or a dangerous crime against a child.
- c. First- or second-degree murder.
- d. Sexual assault.

The earned release credit rate for nondangerous crimes would be 1 day for every 1 day served. This would effectively require an inmate to serve 50% of their sentence. The rate for dangerous crimes would remain 1 day for every 6 days, which requires an inmate to serve 85% of their sentence. *Table 1* compares the earned release credits allowed under current law to the proposition:

	<u>Earned Release Rate</u>	<u>Minimum Time Served</u>
<u>Current Law</u>		
Drug Use/Possession	3 days for every 7 served	70%
Other Offense	1 day for every 6 served	85%
<u>Proposition</u>		
Nondangerous Offense	1 day for every 1 served	50%
Dangerous Offense	1 day for every 6 served	85%

In addition to future inmates entering ADC custody, the proposition also applies the new earned release credit rate to any inmate who has earned at least 1 credit before the effective date of January 1, 2021 and requires ADC to recalculate the number of earned release credits for those inmates. This change could make certain inmates immediately eligible for release on January 1, 2021. This could result in an initial increase in Community Supervision caseloads (see below for further information).

The ADC population as of June 30, 2020 was 40,151. ADC reports that 25,668 of those inmates would be eligible for the increased earned release credits. Of the inmates eligible, ADC estimates that 12,513 inmates would be eligible for release on January 1, 2021 and an additional 7,482 would be released in the first year of implementation. The remaining 5,673 inmates would be released after the first year.

The ongoing impact of these releases on the ADC population is difficult to determine. As described above, 19,995 inmates would be released in the first year. Some of these inmates, however, would be eligible for release in the first year without the increased credits.

Any reduction in inmate levels would not automatically reduce ADC spending. Through the annual appropriations process, the Legislature and Governor could respond to lower prisoner counts by eliminating prison beds, which in turn, could reduce staffing costs. The response to lower prisoner counts could also be to reallocate existing staff to improve the current ratio of correctional officers to inmates.

Due to the current COVID-19 crisis, for example, the Legislature and the Governor may choose to implement the provisions of the bill by reducing the use of temporary beds in order to allow for more separation between

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inmates, effectively limiting savings to marginal costs. Temporary beds include those beds located in areas not originally intended for housing prisoners or double-bunked beds in areas intended for single bed cells.

If the Legislature and Governor decide to reduce ADC spending in response to lower population counts, there are different means of achieving the potential savings. One method is to calculate the savings based on the marginal daily cost of housing an inmate. According to ADC, the current marginal cost to house an inmate in a state-operated facility is \$4.92 per day. This reflects costs for food (\$3.46) and other non-health care-related costs such as clothing, bedding and inmate programs (\$1.46).

A second method would involve closing an entire prison unit or multiple units. Closing units would generate greater savings as it also involves staffing costs. The per day cost of all unit expenses would be approximately \$40 to \$70 per inmate. ADC estimates the full unit cost at \$42 per inmate per day in addition to the marginal cost described above. The actual savings would depend on the custody level and location of the closure.

Additionally, the inmate population could impact ADC's health care costs. The health care contract for inmates in state prison facilities is based on a fixed inmate population of 33,777. If the proposition results in an ongoing population reduction, ADC may be able to achieve future health care savings. The current contract can be renegotiated starting in FY 2022.

#### Other Provisions

The proposition makes other changes that could affect the level of the prison population, including enhanced judicial discretion in sentencing and new sentencing guidelines for repetitive offenders.

#### *Judicial Sentencing Discretion for Nondangerous Offenses*

The Arizona Criminal Code (as outlined in A.R.S. Title 13) provides criminal sentencing guidelines that include a range of prison sentences that can be ordered for individual convictions. The proposition would provide the court additional discretion for shorter sentences when sentencing individuals for nondangerous offenses, if the court determines a shorter sentence is in the "interest of justice." The proposition would allow the court to consider the facts and circumstances of the case, best practices to reduce recidivism, proportionality, and input from victims, family members and experts.

Any potential reduction in sentence lengths imposed by the court could reduce the inmate population and reduce ADC costs. However, this reduction would be subject to the discretion of the court and, as a result, we cannot determine the impact in advance.

#### *Repetitive Offenders*

Statute provides a different sentencing range for individuals that have previously been charged with and convicted of a felony offense, known in statute as "repetitive offenders." The repetitive offender sentencing range can be up to 3 times higher than for a first offense. The proposition would require that the sentencing range for a repetitive offense can only be used if the defendant was convicted and sentenced for the prior felony before the person committed the current offense.

This change could result in lower sentences for individual inmates who under current law could be charged as a repetitive offender. We do not have data on the number of cases for which this change would apply, and as a result we cannot determine the impact of this change in advance.

#### Other Factors Affecting Inmate Population

Other factors could impact the inmate population. For example, releasing inmates at 50% of their sentence served rather than 85% could result in changes in recidivism rates. If recidivism increases, for example, the net population

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reduction as a result of increased earned release credits could be smaller. We cannot determine this impact in advance.

The actions of county prosecutors may also affect the population level. For example, a prosecutor may seek more serious charges or be less likely to offer certain plea bargains in response to the increased release credits. This could impact any reduction to the inmate population, but the impact of prosecutorial responses to the proposition cannot be determined in advance.

#### Medical Marijuana Fund Transfers

The proposition transfers a total of \$12 million one-time from the Medical Marijuana Fund as follows:

1. \$3 million to ADC to cover the cost of implementing the provisions of this act.
2. \$1 million to DOR to cover the costs of implementing the provisions of this act.
3. \$4 million to the Victim and First Responder Support Services Fund, as established by this act (see below).
4. \$4 million to ADC for the following:
  - a. To recruit, hire and retain correctional substance abuse counselors, mental health reentry coordinators, and education program teachers.
  - b. To train and retain corrections officers to oversee and implement expanded recidivism reduction, drug addiction and education programs.

The Medical Marijuana Fund revenue comes from application and renewal fees from medical marijuana dispensaries, civil penalties and private donations. The Department of Health Services projects the fund will have a balance of \$91.2 million at the end of FY 2020. As a result, the \$12 million transfer would reduce the ending balance to an estimated \$79 million at the end of FY 2021.

#### Victim and First Responder Support Services Fund

The proposition would establish the Victim and First Responder Support Services Fund. The fund would be administered by the State Treasurer and consist of the following monies:

1. A one-time transfer of \$4 million transfer from the Medical Marijuana Fund, as authorized by this act (see Medical Marijuana Fund discussion above).
2. Private donations made directly or via income tax return filed by an individual or business.
3. Monies appropriated to the fund by the Legislature.

The fund may be used by the State Treasurer to administer the fund and by DOR to cover the costs of adding the option of a voluntary donation on income tax return forms. The remaining monies are to be transferred twice annually to the Attorney General to award grants to non-profit organizations that provide victim support services. The Attorney General may also use the fund to cover administrative costs of awarding grants.

We have not yet received estimates from these agencies on their administrative costs.

#### Community Supervision

A.R.S. § 13-603 requires an inmate to serve an additional 1 day for every 7 days of their total sentence in post-release Community Supervision. As of June 30, 2020, ADC was supervising 5,363 inmates in Community Supervision. The proposition prohibits increased earned release credits from also increasing the amount of time a prisoner serves in Community Supervision.

As discussed above, we believe there could be a temporary increase in Community Supervision caseloads due to increased earned release credits applied to existing inmates. ADC reports that 12,513 inmates would be eligible for immediate release and begin serving Community Supervision. This increase in cases may require ADC to hire

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and train temporary staff to supervise these released inmates. These additional costs could temporarily offset some savings as a result of the inmate population reduction.

We believe that Community Supervision caseloads would eventually return to normal levels, barring other changes in overall average sentence length as a result of implementing the proposition.

7/30/20