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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1156                      **Hearing Date:** July 7, 2015  
**Author:** Brown  
**Version:** February 27, 2015  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JM

**Subject:** *Imprisonment in County Jail*

### HISTORY

**Source:** California Public Defenders; Conference of California Bar Associations; Judicial Council of California

**Prior Legislation:** AB 109 (Committee on Budget) – Ch. 15, Stats. 2011  
AB 117 (Committee on Budget) – Ch. 39, Stats. 2011  
SB 42 (Nejedly) – Ch. 1139, Stats. 1976

**Support:** American Civil Liberties Union; California Attorneys for Criminal Justice; Legal Services for Prisoners with Children; National Association of Social Workers; Sheriff of the City and County of San Francisco

**Opposition:** None known

**Assembly Floor Vote:** 54 - 24

### PURPOSE

*The purpose of this bill is to apply a wide range of sentencing statutes and rules applicable to prison sentences to felony sentences imposed under criminal justice realignment.*

*Existing law:*

Requires the court to choose the lower, middle or upper term when imposing a prison sentence and to state reasons for the sentencing choice. The court shall impose the middle term unless it finds factors in aggravation or mitigation justifying imposition of the upper term or lower term, respectively. (Penal Code § 1170 (b).)

Requires the sentencing court to inform a defendant sentenced to prison that he or she may be required to serve a period of parole. (*Id.*)

Provides that when a defendant has been committed to state prison, the court may, within 120 days of commitment on its own motion, or at any time upon the recommendation of the Department of Corrections and Rehabilitation (CDCR) or the Board of Parole Hearings (BPH), recall the sentence and resentence the defendant. Any new sentence may be no greater than the initial sentence. The court shall apply the sentencing rules in the Rules of Court so as to

eliminate disparity and promote uniformity in sentencing. (Pen. Code, § 1170, subd. (d)(1).)

States that in any case in which the amount of pre-sentence credit exceeds the sentence imposed, the sentence shall be deemed to have been served. The court shall advise the defendant that he or she will serve a parole term, unless the in-custody credits exceed both confinement time and parole. (Pen. Code, § subd. (a)(3).)

Provides that if CDCR or BPH determine both that the prisoner has six months or fewer to live and would not pose a threat to public safety if released, CDCR director BPH may recommend to the court that the prisoner's sentence be recalled. The court may order the prisoner's release if it makes those same findings. (Pen. Code, § 1170, subd. (e)(1)-(2).)

Requires the court to hold a hearing to consider whether a prisoner's sentence should be recalled within 10 days of receipt of a positive recommendation by the CDCR director or BPH. (Pen. Code, § 1170, subd. (e)(3).)

States that the Judicial Council shall promote uniformity of sentencing by adopting rules that set out criteria for the consideration of trial judge in making decisions to:

- Grant or deny probation;
- Impose the lower or upper term;
- Impose concurrent or consecutive sentences;
- Determine whether or not to impose an enhancement when an enhancement is permitted by law; or
- Deny a period of mandatory supervision in the interests of justice, or determine the appropriate period and conditions of mandatory supervision. (Pen. Code, § 1170.3, subd. (a)(1)-(5).)

Provides that any person convicted of a felony who has been released from any state penal institution, whether discharged on completion of the total term or released on parole, who has not been incarcerated in a state penal institution since his or her release, and who has resided in California for three years may file a petition for a certificate of rehabilitation and pardon. (Pen. Code, § 4852.01, subd. (a).)

*This bill:*

Clarifies that in any case where the pre-imprisonment credit of a person sentenced to the county jail under the 2011 Realignment Act exceeds any sentence imposed, the entire sentence shall be deemed to have been served, except for the remaining portion of mandatory supervision, and the defendant shall not be delivered to the custody of the county correctional administrator.

Provides that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

Requires the Judicial Council to adopt rules providing criteria for the imposition of the lower, middle or upper term, and determine the county or jurisdictional territory when the court is

imposing a concurrent or consecutive sentence under the 2011 Realignment Act upon a person previously sentenced to the county jail under the 2011 Realignment Act in another county or jurisdictional territory.

Specifically requires the court to choose the lower, middle or upper term when imposing an executed felony jail term and to state reasons for the sentencing choice. The court shall impose the middle term unless it finds factors in aggravation or mitigation justifying imposition of the upper term or lower term, respectively.

Requires the sentencing court to inform a defendant sentenced to prison may be required to serve a period of postrelease community supervision.

Clarifies that a person released from the state prison on post release community supervision shall be supervised by the probation department of the county to which the person is released, and requires that the inmate be informed of his or her duty to report to the county probation department upon release.

Extends the right to petition for a certificate of rehabilitation and pardon to persons convicted of a felony and sentenced to a county jail under the 2011 Realignment Act and requires that the inmate be informed in writing by the facility official of this right.

Provides that a person shall not be subject to prosecution for a non-felony offense arising out of a violation in the California Vehicle Code, with the exception of Driving under the Influence (DUI), that is pending against him or her at the time of his or commitment to a county jail under the 2011 Realignment Act.

Extends provisions related to the compassionate release of a state prison inmate, who is terminally ill, to an inmate sentenced to a county jail under the 2011 Realignment Act.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."( Defendants'

February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14)). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

AB 1156 eliminates discrepancies and inconsistencies in treatment between felons sent to prison and felons sent to county jail under Realignment that were not addressed in the original or subsequent legislation. These inconsistencies are unnecessary, unfair, and costly. Their elimination will enhance the fairness of the system and save the taxpayers money. "

### 2. Criminal Justice Realignment

Criminal justice realignment was a sea change in California criminal law, arguably comparable in importance to enactment of the Determinate Sentencing Law (DSL) in 1976. For most crimes, the DSL eliminated indeterminate sentences under which the time a defendant served in prison was determined by the Adult [parole] Authority within a statutory range. Under the DSL, a court chooses from a "triad" of possible set or determined terms - lower, middle or upper. The middle terms is imposed unless there are factors in aggravation or mitigation justifying an upper or lower terms. Over time, additional penalties - enhancements - and new sentencing schemes, including the Three Strikes law, were steadily enacted. The new penalty provisions were often enacted in response to particularly notorious crimes for which it was argued the DSL provided insufficient punishment.

The DSL requires the sentencing court to make a number of choices in imposing sentence. These choices or decisions include granting or denying probation and whether to impose the lower, middle or upper term if probation is denied or prohibited. Where the defendant is

convicted of more than one felony offense, or if enhancements (e.g., use of a weapon or prior convictions) apply, sentencing becomes more complicated. The court chooses one offense to be the principal term and builds the sentence around it, making decision about whether sentences should be served consecutively (back-to-back) or concurrently (at the same time). Other sentencing decisions may apply, such as whether to strike punishment in any part. All of the sentencing rules a court must follow and choices a court must make have been considered in myriad appellate cases since enactment of the DSL. The published opinions of the courts become another body of law, binding on the trial courts. Where the appellate courts are in conflict, the California Supreme resolves the conflict and settles the issue.

Voters and the Legislature steadily approved prison construction from 1982 through the 1990s, but construction programs largely slowed or stopped with the opening of a new prison in Delano in 2005.<sup>1</sup> Recently, new prison medical facilities have been built through the supervision of a receiver<sup>2</sup> appointed by the federal courts in response to a finding that California prisons were so crowded as to deny adequate medical care, creating an unconstitutional system of cruel and unusual punishment.<sup>3</sup> California spent heavily on medical facilities and care, but the federal court continued to demand that the prison population be reduced.

The prison population was only substantially reduced through implementation of criminal justice realignment after 2011. Realignment essentially transferred responsibility for low-level felony inmates from state prison to counties and county jail. Certain offenders are excluded from county jail sentencing - those with a prior or current serious or violent felony conviction, or any person required to register as a sex offender. Excluded defendants continue to serve imposed and executed felony terms in prison.

This bill applies the sentencing statutes and court rules enacted and promulgated for the DSL to sentences imposed pursuant to criminal justice realignment. This bill should provide clarity and guidance for trial courts in making sentencing decisions under realignment.

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<sup>1</sup> <http://www.csmonitor.com/2005/0620/p03s02-usju.html>

<sup>2</sup> <http://www.sfgate.com/politics/article/California-spending-billions-to-build-new-prisons-2335352.php>

<sup>3</sup> <http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>