
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 670 **Hearing Date:** March 28, 2017
Author: Jackson
Version: February 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentencing: County of Incarceration and Supervision*

HISTORY

Source: Judicial Council

Prior Legislation: AB 1156 (Brown), Ch. 378, Stats. 2016
AB 109 (Committee on Budget) Ch. 15, Stats. 2011
AB 117 (Committee on Budget), Ch. 39, Stats. 2011

Support: California Public Defenders Association

Opposition: Unknown

PURPOSE

The purpose of this bill is 1) to require, when imposing specified felony sentences concurrent or consecutive to another felony sentence in another county or counties, the court rendering the subsequent judgment to determine the county or counties of incarceration and supervision of the defendant, and 2) to require the Judicial Council to adopt rules providing criteria for the consideration of the judge to determine the appropriate county or counties of incarceration and supervision.

Existing law states that in any case in which the sentence for a felony is prescribed by statute for a term of imprisonment in the state prison or county jail of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law. (Pen. Code, § 1170, subd. (a)(3).)

Existing law provides that in sentencing a convicted person, the court shall apply the sentencing rules of the Judicial Council. (Id.)

Existing law requires the court to state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period or postrelease community supervision (PRCS) for a period. (Pen. Code, § 1170, subd. (c).)

Existing law states that when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in a county jail. (Pen. Code, § 1170.1, subd. (a).)

Existing law provides, except in cases where a court finds that in the interests of justice it is not appropriate, that the court shall suspend the concluding portion of a defendant's sentence to be served on mandatory supervision, which shall commence upon release from physical custody or an alternative custody program, whichever is later, unless otherwise ordered by the court. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court (Pen. Code, § 1170, subd. (h)(5).)

This bill requires, when the court is imposing judgment on a felony concurrent or consecutive to a judgment or judgments previously imposed on a felony in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

Existing law requires the Judicial Council shall seek to promote uniformity in sentencing under the determinate sentencing law by adopting rules providing criteria for the consideration of the trial judge at the time of sentencing, as provided. (Pen. Code, § 1170.3.)

This bill requires the Judicial Council to adopt rules providing criteria for the consideration of the trial judge when determining the county or counties of incarceration and supervision of the defendant when imposing a concurrent or consecutive judgment to a judgment or judgments previously imposed.

COMMENTS

1. Need for This Bill

According to the author:

Criminal Justice Realignment made significant changes to the sentencing and supervision of persons convicted of felony offenses. Many defendants now serve their terms of incarceration in county jail instead of state prison.

Realignment also made changes to how those defendants are supervised upon release. First, under Penal Code § 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case. Second, realignment created “post-release community supervision” whereby certain offenders released from state prison are no longer supervised by the state parole system but instead by a local county supervision agency, such as a probation department. Additionally, following realignment, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings but are instead adversarial judicial proceedings conducted in county superior courts.

Realignment legislation is silent on the issue of how sentences from multiple jurisdictions are to be served. The issue is significant because counties must now carry the cost and burdens of local incarceration and supervision. Penal Code § 1170.1, which governs multiple-county and multiple-case sentencing for commitments to state prison and county jail, and California Rules of Court, rule 4.452, require the second judge in a consecutive sentencing case to “resentence” the defendant to a single aggregate term. Currently there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

Senate Bill 670, sponsored by the Judicial Council, amends Penal Code sections 1170 and 1170.3 to clarify judicial sentencing authority when imposing concurrent or consecutive judgments under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

Senate Bill 670 also amends Section 1170.2 to require the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.

2. Public Safety Realignment

The Public Safety Realignment Act was enacted in 2011. The new law required “certain lower-level felons be managed by counties in jails and under community supervision rather than sent to state prison. Generally, only felony offenders who have a current or prior offense for a violent, serious, or sex offense are currently eligible for state prison. In addition, of those felons released from state prison, generally only those with a current violent or serious offense are supervised in the community by state parole agents, with other offenders supervised by county probation departments. Responsibility for housing state parole violators was also shifted from state prisons to county jails. (Legislative Analyst’s Office, California’s Criminal Justice System: A Primer (Jan. 2013), at 57.)

The purpose of this legislation was to “realign to county governments the responsibility for managing and supervising certain lower level offenders. In adopting this realignment, the Legislature had multiple goals, including reducing the prison population to meet a federal court-

ordered cap (in a case related to inmate health care that we discuss in more detail below) and to reduce state correctional costs. Another stated goal of realignment was to improve public safety outcomes by keeping lower-level offenders in local communities where treatment services exist and where local criminal justice agencies can coordinate efforts to ensure that offenders get the appropriate combination of incarceration, community supervision, and treatment. The expectation was that counties would be more effective and efficient than the state at managing these offenders and could reduce the high recidivism rates experienced by state parolees.” (*Id.* at 58.)

Prior to realignment, felony offenders who were sentenced to a term of incarceration served their time in state prison. If a person had multiple charges or subsequent charges in a different county, the judge in the subsequent jurisdiction would incorporate the new sentence with the prior sentence, either consecutive or concurrent, and the entire sentence would be served at one institution. Upon release from state prison, the person would be placed on parole and supervised by the state.

After realignment, persons convicted of felonies that are not statutorily excluded would serve their term of imprisonment in a county jail. Unlike prisons that are all under the jurisdiction of the California Department of Corrections and Rehabilitation, county jails are under the jurisdictions of all of the separate counties. A person who has subsequent felony case in different county may be ordered to serve his or her sentence in the first county, the subsequent county, or a combination of both counties depending on what is appropriate under the circumstances. Additionally, upon release, the person would be placed on a term of mandatory supervision provided by county probation, so the court must decide which county will supervise the defendant. Existing law does not provide guidance on how courts should make these decisions.

This bill would require the second or subsequent court to determine the county or counties of incarceration and supervision at the time of sentencing, and would require Judicial Council to adopt rules providing criteria for courts to consider in order to determine the appropriate county or counties of incarceration and supervision.

4. Problem of Cases in Multiple Jurisdictions

The problem of cases in multiple jurisdictions, post-realignment, is further explained in the example below:

If a defendant is convicted of vehicle theft in County A, and later is convicted of second degree burglary in County B, it is unclear how the entire sentence is to be structured and where the custody time is to be served. The cases would be handled in the traditional manner if both counties granted probation; i.e., two probation departments would potentially supervise the defendant, but there would be no “aggregation” of any sentence. The process is not at all clear if the two counties sentence the defendant under section 1170(h)(5). Since the rules regarding the structure of the sentence under sections 1170 and 1170.1 have not been changed the second sentencing judge will have the jurisdiction to determine whether there will be a consecutive or concurrent sentencing structure. Section 1170.1(a) governs multiple count and multiple case sentencing, whether the commitment is to state prison or county jail: “when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a

consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1.” (Emphasis added.) Beyond that, however, there is no existing rule or procedure to answer the following questions:

- Section 1170.1 and California Rules of Court, Rule 4.452 require the second judge in a consecutive sentencing case to “resentence” the defendant on any prior case. Where is the sentence to be served if the last judge determines a consecutive sentence is appropriate? Is it in the last county to sentence? Can the last judge impose the term, then remand the defendant to the first county to serve both the first and second sentence?
- Where is the sentence to be served if the last judge determines a concurrent sentence is appropriate? Is the entire sentence served in the last county? Does custody follow the longest term?
- What if one county decides to contract with the Department of Corrections and Rehabilitation for the placement of the defendant in state prison? Must the other county pay for any of the costs of custody?
- What if one county imposes a straight term in custody under section 1170(h)(5), but the other county imposes a split sentence? How is the sentence structured and where is it to be served?
- What happens if the defendant is sentenced in different counties under section 1170(h), but receives an early discharge by the sheriff in the first county? Does the sentence in the second county then start to run?
- How to multiple counties share the responsibilities of mandatory supervision under section 1170(h)(5)(B)?

(Sentencing California Crimes (The Rutter Group, Criminal Practice Series), July 2016 Update, Ch. 11 § 11:35 (Richard Couzens, Tricia A. Bigelow, and Gregg L. Prickett).)

5. Arguments in Support

Judicial Council is the sponsor of this bill and writes in support,

In 2011, Criminal Justice Realignment made significant changes to the sentencing and supervision of persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants who are convicted of felonies and not granted probation now serve their incarceration terms in county jail instead of state prison. (Penal Code § 1170(h).) Further, under realignment, when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case. (§ 1170(h)(5)(A).) This term if supervision is referred to as “mandatory supervision.” (§ 1170(h)(5)(B).)

Realignment legislation is silent on the issue of sentences from multiple jurisdictions. The issue is significant because now counties must carry the cost and burdens of local incarceration and supervision. Section 1170.1, which governs multiple-count and

multiple-case sentencing for commitments to state prison and county jail, and California Rules of Court, rule 4.452, require the second judge in a consecutive sentencing case to “resentence” the defendant to a single aggregate term. Currently, there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

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