
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1080 **Hearing Date:** June 6, 2023
Author: Ta
Version: March 23, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal justice realignment*

HISTORY

Source: Author

Prior Legislation: AB 109 (Committee on Budget), Ch. 15, Stats. 2011

Support: Arcadia Police Officers' Association; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California District Attorneys Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Peace Officers Research Association of California (PORAC); Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to require the Legislative Analyst's Office to prepare a report that includes specified data, to be submitted to the Legislature on June 30, 2030, evaluating the results of the 2011 criminal justice realignment act over the previous 10 years.

Existing law defines a “felony” as “a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under [criminal justice realignment].” (Pen. Code, § 17, subd. (a).)

Existing law states that the punishment for a felony not otherwise prescribed is 16 months, or two or three years in state prison, unless the offense is punishable in the county jail pursuant to realignment. (Pen. Code, § 18, subd. (a).)

Existing law prohibits a term of more than one year in the county jail except for executed felony sentences under realignment. (Pen. Code, §19.2.)

Existing law specifies where the defendant has a prior or current felony conviction for a serious felony, or a prior or current conviction for a violent felony, has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony or a violent felony, or is required to register as a sex offender, or is convicted of a crime and as part of the sentence a specified enhancement is imposed, an executed sentence for a felony shall be served in state prison. (Pen. Code, § 1170, subd. (h)(3).)

Existing law provides that a felony not specified in the above provision shall be punishable by a term of imprisonment in the county jail. (Pen. Code, § 1170, subds. (h)(1) & (2).)

Existing law designates about 70 felonies as state-prison offenses. (See e.g., Pen. Code, §§ 86 [bribes involving member of the Legislature], 92 [bribes involving judicial officer or juror], 191.5, subd. I(1) [gross vehicular manslaughter while intoxicated], 266i [pandering].)

Existing law requires the court to suspend execution of a concluding portion of the term of a county-jail-eligible felony sentence for a period selected at the court's discretion, unless the court finds that in the interests of justice it is not appropriate in a particular case. The suspended part of the sentence is known as mandatory supervision. (Pen. Code, § 1170, subd. (h)(5).)

Existing law requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR):

- A person who committed a serious felony listed in Penal Code section 1192.7, subdivision I;
- A person who committed a violent felony listed in Penal Code section 667.5, subdivision I;
- A person serving a Three-Strikes sentence;
- A high risk sex offender;
- A mentally disordered offender;
- A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
- A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subds. (a) & (i).)

Existing law requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b), & 3451.)

Existing law requires all persons paroled before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09.)

Existing law states that the parole period for most offenders is three years, except as specified. (Pen. Code, § 3000, subd. (b).)

Existing law limits the term for PRCS to three years. (Pen. Code, § 3451, subd. (a).)

Existing law provides for intermediate sanctions for violating the terms of parole or PRCS, including “flash incarceration” for up to 10 days. (Pen. Code, §§ 3000.08, subd. (d) & 3454.)

Existing law specifies that if parole or PRCS is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, §§ 3000.08, subd. (g) & 3455, subd. (d).)

This bill requires the Legislative Analyst’s Office (LAO) to prepare and submit a report to the Legislature by June 30, 2030 evaluating the results of criminal justice realignment over the previous 10 years.

This bill requires the report to include, but not be limited to, the following:

- The amount of funding received per county and how that funding was allocated, including, but not limited to, the following categories: (1) funding received by department or agency; (2) all types of facilities construction; (3) the number and type of additional personnel; (5) rehabilitative programming; and (5) any other services.
- Information on sentencing practices, including the use of straight sentencing, split sentencing, probation, diversion, and any other alternatives to custody.
- The impact on the county jail population as based on changes to the average monthly jail population, whether there were changes in jail release policies, and whether the county jail was under any court-ordered population cap;
- Information on PRCS practices, including caseload of probation officers, responses to supervision violations, including describing the sanctions used and particularly the use of flash incarceration and programming and services offered.
- Recidivism outcomes as defined by rearrest and reconviction rates after release from custody for offenders sentenced to county jail for a realigned felony, and those released on PRCS.

This bill states that the report may be based on data from every county, or alternatively, a multicounty study using data from at least 15 counties representative of the state.

COMMENTS

1. Need for This Bill

According to the author of this bill:

AB 1080 will provide the Legislature with a much-needed report on the successes and shortcomings of AB 109 (Committee on Budget, 2011), also known as public safety realignment. My uncontroversial legislation would direct the Legislative

Analyst's Office to prepare a comprehensive analysis of the previous years of AB 109, and would explore rehabilitation data, rehabilitation programming options, and funding and staffing for local counties. Given the lack of thorough research on realignment, AB 1080 would provide the Legislature with a proper review of this important legislation, especially as this body considers other public safety measures.

2. Background: Criminal Justice Realignment Act of 2011

After decades of prison population growth, California's prisons were faced with severe overcrowding in the late 1990s and early 2000s. Lawsuits against the state alleging inadequate mental health and medical care resulted in the appointment of a federal receiver to oversee these functions within the state prisons. In 2010, a federal three-judge panel issued a ruling ordering California to reduce its prison population to from 190% to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) Given the prison population at the time of the ruling, the necessary reduction amounted to almost 40,000 inmates. The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

The potential indiscriminate release of tens of thousands of persons from prison raised significant public safety concerns so the state enacted AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, which went into effect on October 1, 2011, to realign correctional and supervisory duties of low-level felonies from the state to counties. The law aimed to reduce prison population by redefining certain felonies, depending on the crime itself and the criminal history of the offender, as eligible for imprisonment in a county jail rather than state prison. Additionally, certain felony offenders became subject to local supervision instead of state supervision upon release.

a. Jail-Eligible Felonies

Prior to realignment, a felony was a crime punishable by death or imprisonment in state prison. Effective October 1, 2011, criminal justice realignment created a new classification of felonies that are punishable by imprisonment in a county jail, as specified, depending upon the criminal history of the offender. This change, contained in subdivision (h) of Penal Code section 1170, applies only to criminal statutes which have been expressly amended to provide for a felony jail term where otherwise allowable.

Certain felony offenders are categorically prohibited from serving an executed felony sentence in county jail. The following persons are *statutorily ineligible* to serve any executed felony sentence in county jail:

- The defendant has a *prior or current* felony conviction for:
 - a serious felony described in subdivision (c) of Section 1192.7, or
 - a violent felony described in subdivision (c) of Section 667.5;
- The defendant has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious or violent felony in California, as specified;

- The defendant is required to register as a sex offender; or
- The defendant is convicted of a crime and as part of the sentence receives an aggravated theft enhancement, as specified.

In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody and which require a state prison sentence.

For convicted felony offenders subject to confinement in a county jail, courts are authorized to impose the felony sentence to commit a defendant to county jail as follows:

- For a full term in custody as determined in accordance with the applicable sentencing law; or,
- For a term as determined in accordance with the applicable sentencing law, but suspend execution of a part of the sentence during which time the defendant shall be supervised on mandatory supervision by county probation 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.

b. Post-Release Supervision

Prior to realignment, individuals released from prison were placed on parole and supervised in the community by state parole agents. If it was alleged that a parolee had violated a condition of parole, they would have a revocation proceeding before the Board of Parole Hearings. If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some individuals released from prison from state parole agents to PRCS provided by local probation departments. Parole under state supervision for persons released from prison is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subs. (a) & (c), and 3451, subd. (b).) All other individuals released from prison are subject to up to three years of PRCS under local supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

Additionally, realignment changed the process for revocation hearings. As of July 1, 2013, the trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under the jurisdiction of CDCR. Moreover, intermediate sanctions, including flash incarceration, also became available for a person on supervision. (Pen. Code, § 3000.08, subd. (d).)

Realignment also changed where a person is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; persons serve the revocation term in county jail. (Pen. Code, §§ 3056, subd. (a), and 3458.) There is a 180-day limit to incarceration. (Pen. Code, §§ 3056, subd. (a), and 3455, subd. (c).) The only offenders who are eligible for return to prison for

violating parole are life-term parolees paroled pursuant to Penal Code section 3000.1 (e.g., murderers, specific life term sex offenses).

After the enactment of criminal justice realignment, Proposition 30 (approved by California voters in 2012), provided that legislation enacted after September 30, 2012 that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation apply to local agencies only to the extent that the state provides annual funding for the cost increase. To the extent local agencies were not provided with funding under 2011 Realignment to complete these reporting activities, funding may be required from the state to support these local activities.

3. Impact of Criminal Justice Realignment

There have been several reports published by the Public Policy Institute of California (PPIC) which studied the impacts of realignment. For example, PPIC produced a report evaluating the impact of Realignment after the first several years. (<https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>.) Subsequently, in 2017, PPIC produced a report on Realignment and Recidivism. (<https://www.ppic.org/publication/realignment-and-recidivism-in-california/>) In 2015, the RAND Corporation studied county responses to realignment in 12 counties. (https://www.rand.org/pubs/research_reports/RR872.html [as of March 16, 2023].)

As noted by PPIC, while 2011 criminal justice realignment did reduce the prison population as intended, the reduction was not enough to meet the court-ordered target; the target was finally met after several subsequent criminal justice reforms were enacted:

Realignment substantially reduced the prison population, but almost all of the decline took place during the first year and was not enough to meet the judicial target. By September 2012, the prison population had fallen by about 27,400 and the institutional population, including all inmates housed in California Department of Corrections (CDCR) facilities subject to the court order, had dropped to 150.5 percent of capacity. The population then leveled off and began to rise slightly. Increased use of contract beds (that is, inmates housed in non-CDCR facilities operated by private and public entities) and the opening of a health care facility in Stockton helped the state move closer to the target. In November 2012, California voters passed Proposition 36, revising the state's three-strikes law to impose a life sentence on a third felony conviction only in cases of serious or violent crimes, further reducing the number of convicts serving time in state prisons. By October 2014, three years into realignment, the prison population stood at 140.9 percent of capacity, still roughly 2,850 inmates above the mandated target. The prison population finally fell below the target after state voters passed Proposition 47 in November 2014, which reduced penalties for many drug and property offenses. Between November 2014 and August 2015, the prison population fell by almost 7,800. It has been below the target since January 2015.

(PPIC, *Public Safety Realignment Impacts So Far* (Sept. 2015) <<https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>> [as of May 30, 2023].) The PPIC also reported on crime rates and recidivism rates post-realignment. Their findings show that realignment did not increase violent crime, but auto thefts rose. (*Ibid.*)

Additionally, overall recidivism rates for felony offenders declined and individuals released from prison had the highest reconviction rate. (PPIC, Recidivism of Felony Offenders in California (June 2019) <<https://www.ppic.org/publication/recidivism-of-felony-offenders-in-california/>> [as of May 30, 2023].)

While there have been several relevant studies on the impacts of criminal justice realignment, there does not seem to be a report evaluating its longer term effects. This bill would require the LAO to prepare and submit a report to the Legislature evaluating the results of criminal justice realignment over the previous 10 years, as specified. This bill would require the report to include data on funding, sentencing practices, jail population and recidivism rates, among other things. This data can help the Legislature in identifying best practices and what areas may need improvement.

4. Argument in Support

According to the Riverside Sheriffs' Association:

The Riverside Sheriffs' Association are in support AB 1080 which direct the Legislative Analyst's Office to prepare a report evaluating the results of AB 109 (Committee on Budget, 2011). The report would provide a comprehensive analysis of the previous ten years of AB 109 and would explore rehabilitation data, rehabilitation programming options, and funding and staffing for local counties.

AB 1080 would solve this issue, and provide the Legislature with a proper review of AB 109 to better understand realignment's successes and shortcomings. AB 1080 would provide a full overview of correctional strategies, prison overcrowding, strain at the county level, and more relevant data that can inform future legislation.

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