
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1272 **Hearing Date:** June 14, 2016
Author: Grove
Version: January 13, 2016
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Criminal Procedure: Trial Schedule Conflicts*

HISTORY

Source: The Arc
United Cerebral Palsy California Collaboration

Prior Legislation: AB 2814 (Koretz) failed Senate Public Safety 2006
AB 1273 (Nakanishi) Chapter 133, Stats. 2003
AB 2653 (Chu) - Chapter 788, Stats. 2002
AB 2125 (Pacheco) Chapter 268, Stats. 2000
SB 69 (Murray) Chapter 580, Stats. 1999
AB 501 (Nakano) Chapter 382, Stats. 1999
AB 1754 (Havice) Chapter 61, Stats. 1998
SB 215 (Alpert) Chapter 69, Stats. 1997
SB 1292 (Maddy) Chapter 897, Stats. 1989
AB 452 (Bronzan) Chapter 461, Stats. 1987

Support: California District Attorneys Association; Disability Rights California; Judicial Council of California

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

This bill requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set.

Existing law entitles both the prosecution and a defendant to a right to a speedy trial. (Cal. Const., Art. I, § 13.)

Existing law provides that absent good cause, a defendant is entitled to have felony charges against him or her dismissed if he or she is not brought to trial within 60 days after arraignment. (Penal Code §§1049.5 & 1382 (a)(2).)

Existing law allows a trial court to grant continuances only upon a showing of "good cause." (Penal Code §1050 (e).)

Existing law states that neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause. (Penal Code, §1050 (e).)

Existing law provides that scheduling conflicts of a prosecutor in specific types of cases does constitute good cause for a continuance. (Penal Code §1050 (g)(2).)

Existing law requires the court to make reasonable efforts to avoid scheduling a murder, sexual assault, child abuse, or career criminal prosecution case when the prosecutor has another trial set. (Penal Code §1048.1.)

Existing law provides that “developmental disability” means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature. (Welfare and Institutions Code § 4512 (a).)

This bill provides that the court shall also make reasonable efforts to avoid scheduling a trial where an offense is alleged to have occurred against a person with a developmental disability.

This bill defines developmental disability as the meaning found in Welfare and Institutions Code Section 4512.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 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).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 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 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:

Prosecution of a case in which the victim has a developmental disability can be complex and difficult for several reasons. In cases where the victim has an intellectual disability, the prosecutor may need to use specialized interviewing techniques, and the prosecutor may need to spend more with the victim to gain the victim's trust. In cases involving either intellectual or physical disabilities, in which the victim has speech challenges, an inexperienced prosecutor may have difficulty. In addition, a prosecutor who is not trained or experienced in conveying to a jury that a witness with a developmental disability can be a credible witness may be at a disadvantage in a trial.

Assigning an inexperienced or untrained prosecutor to a trial can put the prosecution at an unfair disadvantage.

2. Sixth Amendment

A defendant has a right to a speedy trial guaranteed by the Sixth Amendment of the United States Constitution, and Article I, Section 13, of the California Constitution. The United States Supreme Court set forth a four-element test in determining whether a delay in trial violated federal constitutional standards: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." (*Barker v. Wing* (1972) 407 U.S. 514,

530.) The California Supreme Court has held that a delay without good cause of more than the sixty-day time period set forth in Penal Code Section 1382 is a legislatively determined violation of a defendant's constitutional right to a speedy trial. (*Sykes v. Superior Court* (1973) 9 Cal.3d 83, 89.)

3. Trial Setting

As noted above, a defendant has a right to a speedy trial guaranteed by both the Sixth Amendment of the United States Constitution and by the California Constitution. To implement an accused's constitutional right to a speedy trial, the Legislature has prescribed certain time periods within which an accused must be brought to trial. (See Penal Code, § 1382.) To go beyond the time frames good cause must be shown. Good cause is not defined in statute; rather, what constitutes good cause depends on the totality of the circumstances in each case. (*People v. Johnson* (1980) 26 Cal.3d 557, 570.) Generally, unavailability of the prosecutor due to calendar conflicts does not constitute good cause in and of itself. (See e.g., *Batey v. Superior Court* (1977) 71 Cal.App.3d 952.) However, the Legislature has determined that when the prosecutor is unavailable to try a case involving murder, career criminal prosecutions, child abuse, domestic violence, certain sex offenses, and stalking, this constitutes automatic good cause for a continuance of up to 10 days. (Penal Code, § 1050(g)(2).)

Existing law also directs judges to take reasonable efforts to avoid double setting a prosecutor for trial where one of the cases involves a charge of murder, sexual assault, child abuse or a career criminal prosecution. (Penal Code, § 1048.1.) This bill would add cases in which it is charged that the victim is a person with a developmental disability, as defined, to these provisions. It does not provide that automatic good cause for continuance of a criminal trial includes cases where a victim is a person with a developmental disability. The court retains discretion to manage its trial calendar.

-- END --