
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 231 **Hearing Date:** June 9, 2015
Author: Eggman
Version: May 26, 2015
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Stalking: Placement at Release From Prison*

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: None

Support: California Communities United Institute; California District Attorneys Association; California Probation, Parole and Correctional Association; California State Sheriffs' Association; Crime Victims United of California

Opposition: None Known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require that an inmate who is released on postrelease community supervision for a stalking offense not be returned to a location within 35 miles of the victim's actual residence or place of employment, if specified criteria are satisfied.

Existing law requires that, subject to specified exceptions, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. (Pen. Code, § 3003, subd. (a).)

Existing law states that an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, specified violent felonies or a felony in which the defendant inflicts great bodily injury on any person, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if Board of Parole Hearings (BPH) or the Department of Corrections and Rehabilitation ("CDCR") finds that there is a need to protect the life, safety, or well-being of a victim or witness. (Pen. Code, § 3003, subd. (f).)

Existing law provides that an inmate who is released on parole for a violation of lewd and lascivious acts or continuous sexual abuse of a child, whom the CDCR determines poses a high risk to the public, shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school. (Pen. Code, § 3003, subd. (g).)

Existing law requires that an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the BPH or the CDCR finds that there is a need to protect the life, safety, or wellbeing of the victim. (Pen. Code, § 3003, subd. (h).)

Existing law provides an exception allowing an inmate may be returned to another county if that would be in the best interests of the public. If BPH or CDCR decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

- a) The need to protect the life or safety of a victim, the parolee, a witness, or any other person;
- b) Public concern that would reduce the chance that the inmate's parole would be successfully completed;
- c) The verified existence of a work offer, or an educational or vocational training program;
- d) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed; or
- e) The lack of necessary outpatient treatment programs for parolees receiving treatment as mentally disordered offenders. (Pen. Code, § 3003, subd. (b)(1)-(5).)

Existing law requires the following persons released from prison on or after October 1, 2011, be subject to parole under the supervision of CDCR:

- a) A person who committed a "serious" felony, as specified;
- b) A person who committed a violent felony, as specified;
- c) A person serving a Three-Strikes sentence;
- d) A high risk sex offender;
- e) A mentally disordered offender (MDO);
- f) 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,
- g) 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) & (c).)

Existing law requires all other offenders released from prison on or after October 1, 2011, to be placed on PRCS under the supervision of a county agency, such as a probation department. (Pen Code § 3000.08, subd. (b).)

This bill provides that an inmate who is released from prison on postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim has requested additional distance in the placement of the inmate.

This bill states that if an inmate who is released on postrelease community supervision in his or her county of last legal residence in compliance with the victim's request for additional distance

in the placement, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

This bill makes other conforming changes.

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. Stated Need for This Bill

The author states:

Under AB 109 (Public Safety Realignment Act of 2011), those convicted of felony stalking, under Penal Code 646.9, may be sentenced to a term in state prison. Currently, offenders who are paroled from state prison can be prohibited from moving within 35 miles of the victim’s home or place of employment. The same is not true for offenders who have been released and placed under Post-Release Community Supervision.

This is because existing law, Penal Code 3003, applies only to offenders released to parole supervision by the California Department of Corrections and Rehabilitation. As a result, Penal Code 3003 does not expressly authorize county probation to make the same prohibitions to protect the life, safety, or well-being of the victim.

2. Background

As explained above, this bill revises existing parole siting limitations to include persons released from prison for the crime of stalking who will be supervised by probation pursuant to the provisions of post release community supervision enacted by the public safety realignment of 2011.

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