
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2590 **Hearing Date:** June 28, 2016
Author: Weber
Version: May 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Sentencing: Restorative Justice*

HISTORY

Source: PICO California

Prior Legislation: None

Support: Bishop of Sacramento Jaime Soto; California Attorneys for Criminal Justice; California Catholic Conference; California Civil Liberties Advocacy; California Industrial Areas Foundation; California Public Defenders Association; Friends Committee on Legislation of California; Felony Murder Elimination Project; Legal Services for Prisoners with Children; Placer People of Faith Together; National Association of Social Workers, California Chapter; National Council of Jewish Women; A New Path; Pacific Southwest Mennonite Conference; Sacramento Area Congregation Together; Sacramento Loaves and Fishes; San Bernardino County District Advocates for Better Schools; Unitarian Universalist Justice Ministry of California; West Coast Mennonite Central Committee; one individual

Opposition: Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotic Officers Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association

Assembly Floor Vote: 47 - 24

PURPOSE

The purpose of this bill is to revise existing legislative declarations concerning the purpose of punishment to instead state that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice, as specified.

Current law reflects a reorganization and consolidation of state correctional departments that was enacted in 2005 (SB 737 (Romero) (Chapter 10, Statutes of 2005)). One purpose of this reorganization was to increase the importance of rehabilitation programming within the department. The reorganization attempted to achieve this by emphasizing rehabilitation as part

of the department's mission, including the word “rehabilitation” in the name of what previously was the Department of Corrections. (Government Code § 12838.)

Current law provides that the legislature finds and declares that the purpose of imprisonment for crime is punishment and that this purpose is best served by terms that are proportionate to the seriousness of the offense while at the same time providing for uniformity in sentences of offenders committing the same offense under similar circumstances. (Penal Code § 1170(a)(1).)

This bill revises this section to instead provide that the purpose of “sentencing is public safety achieved through accountability, rehabilitation, and restorative justice.”

This bill further revises this provision to state, “When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.”

Current law provides that, “. . . the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.” (Penal Code § 1170(a)(2).)

This bill revises this language to state that the educational and rehabilitative programming described above apply to “all offenders.”

This bill deletes this paragraph’s reference to CDCR being encouraged to “give priority enrollment in programs,” and instead provides that CDCR is encouraged to “allow all inmates the opportunity to enroll in programs that promote successful return to the community.”

This bill also deletes from this paragraph the reference to “an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.”

This bill further removes the word “punishment” from this section, and replaces it with the word “sentence,” as specified.

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. Stated Need for This Bill

The author states:

Our current criminal justice system, founded upon the sole purpose of punishment, has failed. Despite our overcrowded prisons, recidivism remains at the unacceptably high rate of 61%. It is time to consider effective alternatives to incarceration, specifically restorative justice solutions, as well as greater opportunities for rehabilitation for those already incarcerated.

It is time to consider effective alternatives to incarceration, specifically restorative justice solutions, as well as greater opportunities for rehabilitation for those already incarcerated.

Restorative justice refers to an alternative to punitive justice. Instead of relying solely on punishment, restorative justice provides an opportunity for the offender to accept responsibility, acknowledge the harm, make agreements to repair the damages as much as possible, and clarify future intentions. This is similar to mediation, but has a broader purpose, to address the needs of the victim as well as repair the damaged relationship. Restorative justice agreements include the development of a circle of support and accountability to increase the likelihood that all agreements are completed.

Nationwide, at least 44 states statutorily provide pretrial diversion alternatives to traditional criminal justice proceedings for persons charged with criminal offenses. Individuals are diverted prior to conviction and successful completion of the program results in a dismissal of charges.

Restorative justice has a proven basis in research, with more than a hundred evaluations from across the US and around the world, including 16 randomized experiments. Results indicate:

- Reduced recidivism in most cases
- More than 90% reporting justice was satisfied
- Victims report less fear and anger after the program* families are supported and strengthened

In California, there are several examples of successful restorative justice programs. Please see fact sheet for examples. (citation omitted)

2. Background

There has been a focus at every level of the criminal justice system in California on alternatives to custody and evidence based practices to reduce recidivism. To that end, criminal courts are incorporating more sentencing options that do not involve custody. Frequently, such sentencing approaches attempt to address the underlying issues connected to the defendant's criminal behavior.

County alternative custody programs can now include newly realigned offenders—non-serious, non-violent, non-sexual (1170h) felons who previously were eligible for prison but now serve all or part of their sentences in county jail. Counties now have the option of placing these 1170h offenders in work release programs, home detention, or electronic monitoring programs at any point during their sentences. Offenders serving local sentences have been eligible for placement in alternative custody programs for years. (Public Policy Institute California, April 2015.) At the State level, the Governor's recent budgets have included money for programs to reduce recidivism. Those programs include community reentry programs and expanded substance abuse treatment for inmates in state prison. (<http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>)

Probation is the suspension of the imposition or execution of a sentence and the conditional release of a defendant into the community under the direction of a probation officer. “Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation.” *People v. Carbajal* (1995) 10 Cal.4th 1114,1120.

The primary considerations in granting probation are: (1) Public safety; (2) the nature of the offense; (3) the interests of justice; (4) the victim’s loss; and (5) the defendant’s needs. (Pen. Code, § 1202.7.) Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendants. *People v. Smith* (2007) 152. Cal.App.4th 1245, 1249. Courts may impose any “reasonable” conditions necessary to secure justice and assist the rehabilitation of the probationer. Such conditions can include any variety of custodial alternatives, or programs for rehabilitation, such as counseling or substance abuse treatment.

3. Restorative Justice

This bill would find and declare that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice. “Restorative justice” is a concept which gives priority to repairing the harm done to victims and communities, and offender accountability is defined in terms of assuming responsibility and taking action to repair harm. Within that general framework, programs involving restorative justice can encompass a wide variety of approaches.

In 2013, The New York Times published an article which examined restorative justice programs in the United States.

Most modern justice systems focus on a crime, a lawbreaker and a punishment. But a concept called “restorative justice” considers harm done and strives for agreement from all concerned — the victims, the offender and the community — on making amends. And it allows victims, who often feel shut out of the prosecutorial process, a way to be heard and participate. In this country, restorative justice takes a number of forms, but perhaps the most prominent is restorative-justice diversion. There are not many of these programs — a few exist on the margins of the justice system in communities like Baltimore, Minneapolis and Oakland, Calif. — but, according to a University of Pennsylvania study in 2007, they have been effective at reducing recidivism. Typically, a facilitator meets separately with the accused and the victim, and if both are willing to meet face to face without animosity and the offender is deemed willing and able to complete restitution, then the case shifts out of the adversarial legal system and into a parallel restorative-justice process. All parties — the offender, victim, facilitator and law enforcement — come together in a forum sometimes called a restorative-community conference. Each person speaks, one at a time and without interruption, about the crime and its effects, and the participants come to a consensus about how to repair the harm done.”

(http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html?_r=0)

4. Support

The California Public Defenders Association supports this bill, stating in part:

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment, and that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. . . .

This bill would instead provide legislative findings and declarations that the purpose of sentencing is public safety achieved through restorative justice and that this purpose is best served by taking into account the science of brain development and maturity and the effects of violence on individuals in disadvantaged neighborhoods, among other specified factors. This bill would provide other legislative findings and declarations, as specified.

. . . (T)his bill provides guidance into the proper factors to be used in sentencing, and takes into account the growing body of research that outlines factors that lead to criminal behavior. It is also a practical bill that takes into account the fact that the vast majority of persons who are imprisoned will be released back into the community, and that educational, vocational, rehabilitative, treatment, and other programs should be made available to all inmates, in order to fully prepare them for successful reentry into the community.

5. Opposition

The California District Attorneys Association opposes this bill, stating in part:

While we agree that accountability, rehabilitation, and restorative justice are also important components of sentencing, so too is punishment. Alternatives to incarceration are not appropriate for some offenders – particularly those who have committed heinous crimes. . . . We would very much appreciate an opportunity to work on language that reflects the variety of purposes that our criminal justice system serves, based on the particular needs of the offender.

6. Related Legislation

Earlier this year this Committee passed the Chair's SB 1324, which currently is on the Assembly floor. That measure also includes revisions to the legislative findings and declarations in Penal Code section 1170.

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