
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1075 **Hearing Date:** April 5, 2016
Author: Runner
Version: February 16, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Department of Justice: Crime Statistics Reporting*

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: None known

PURPOSE

The purpose of this bill is to require the Department of Justice to include disaggregated information on child molestation crimes in its annual statewide criminal statistics report, as specified.

Existing law generally requires the Department of Justice (DOJ) to publish an annual report containing statewide statistical information pertaining to crime, as specified. (Penal Code §§ 13010 *et seq.*)

This bill requires DOJ to include in this annual report “statistics on child molestation in the same format and within the same tables that report on the number, rate per 100,000 population, and percentage change in other violent crimes, including rape.”

This bill provides that, for purposes of this provision, child molestation shall include the combined total of offenses defined in subdivisions (a) and (b) of Section 288 and Section 288.5.”

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:

The California Department of Justice has prepared annual statistical reports on crime for more than fifty years. The report chronicles both violent and property crimes and currently includes homicide, rape, robbery and aggravated assault as well as burglary, grand theft and vehicle theft. Arson was added in 1980. Over the years the definitions of both rape and aggravated assault have changed to include spousal rape and certain instances of domestic violence which were historically ignored. Child molest like spousal rape was a crime that was largely ignored when the FBI Crime Index (and California Index) was first established.

In the 1960's and 1970's California often regarded child molest as a treatable mental disorder sending offenders for treatment in mental hospitals rather than prison under the state's Mentally Disordered Sex Offender program (MDSO.) Until much more recently interfamilial child molest was treated as a lesser offense than stranger molest under California law. Offenders who were members of the victim's household were often granted probation rather than incarceration.

The legislature and the law enforcement community commit considerable resources to reduce sex offenses and to apprehend, incarcerate and ultimately rehabilitate violators. Public agencies also treat victims who often suffer life altering emotional injury.

Much of the focus of policymakers and the public is the protection of the most vulnerable, California's children. Despite this focus little attention is paid to the incidence of child molest compared to rape. A recent summary of inmate commitment offenses reveals that 3,077 California state prisoners have been sentenced for commission of rape. By comparison 9,363 inmates (more than three times as many) were committed for molesting a child. Perhaps it is time that crimes of child molest receive the same level of scrutiny as rape, robbery and vehicle theft.

2. Effect of Legislation; Background

As the author notes, DOJ prepares an annual report entitled *Crime in California*. Its most recent available report, *Crime in California 2014*, explains:

Crime in California, 2014 presents an overview of the criminal justice system in California. Current year statistics are presented for reported crimes, arrests, dispositions of adult felony arrests, adult probation, criminal justice personnel, citizens' complaints against peace officers, domestic violence-related calls for assistance, and law enforcement officers killed or assaulted. In addition, statistics for preceding years are provided for historical context.

This bill would require the California Department of Justice to include disaggregated child molestation statistics in the *Crime in California Report* prepared annually by the Department. The bill provides that the number of child molestation offenses and the rate of offense per 100,000 California residents be reported in the same manner employed to report crimes of rape. The bill defines child molest to include violations of subdivisions (a) and (b) of Penal Code section 288 (lewd or lascivious acts upon a child under the age of 14) or Penal Code section 288.5 (continuous sexual abuse of a child).

It appears that the report currently contains some information on the offenses targeted by this bill under the characterization of "lewd or lascivious," although for purposes of the report that definition includes a broader array of sections (specifically, Penal Code sections 220, 266j, 288(a), 288(b)(1), 288(b)(2), 288(c)(1)*, 288(c)(2), and 288.5(a).) For example, the 2014 report indicates that between 2009 and 2014, adult felony arrests for lewd and lascivious crimes decreased 20.9 percent, and increased 3 percent between 2013 and 2014. (See page 26 of the report.) In addition, the report appears to include a breakdown of the age of the offender for this category of offenses (See page 40 of the 2014 report). This bill would require that this category of offenses be broken down to specifically identify two child molestation crimes.