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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1077                      **Hearing Date:** April 5, 2016  
**Author:** Runner  
**Version:** February 16, 2016  
**Urgency:** Yes                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Law Enforcement: Immigration: Felons*

### HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: American Civil Liberties Union; California Immigrant Policy Center; California Public Defenders Association

### PURPOSE

*The purpose of this bill is to prohibit a local law enforcement agency from taking custody of a previously convicted felon who is being detained or incarcerated by another law enforcement agency if the felon is scheduled for deportation unless there is an outstanding felony warrant and the agency has confirmed that the prosecutorial authority with jurisdiction to prosecute that felony intends to prosecute.*

*Existing law* provides that a law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law or any local policy and under only under specified circumstances. (Government Code § 7282.5)

*This bill* provides that notwithstanding any other law, a local agency shall not take custody of a previously convicted felon who is being detained or incarcerated by another law enforcement agency if the felon is scheduled for deportation or transfer to federal authorities for deportation proceedings unless both of the following apply:

- The local law enforcement agency has an outstanding warrant alleging that the subject felon committed a criminal offense that constitutes a felony under current California law.
- The local law enforcement agency has confirmed that the prosecutorial authority with jurisdiction to prosecute the felony has a current intent to prosecute that felony.

## 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:

In July of 2015, Kathryn Steinle was walking with her father on Pier 14 in San Francisco when she was shot and killed by Juan Francisco Lopez-Sanchez, a career criminal with seven felony convictions. Three months earlier, the San Francisco Sheriff had requested custody of Lopez- Sanchez, because they had a 20 year old warrant for sale of marijuana. The Sheriff's Department arranged to have Lopez-Sanchez transported to San Francisco at public expense before determining whether the case was viable. He was released when the San Francisco District Attorney declined to prosecute.

In response to the troubling circumstances that transpired in San Francisco, SB 1077 would preclude a local law enforcement agency from taking custody of a felon in federal custody unless the local agency has an outstanding felony warrant for the individual and the District Attorney or Attorney General has indicated an intent to prosecute that felony. SB 1077 is a discrete, common sense procedure that applies uniformly to all local jurisdictions in California.

### 2. Intent to Prosecute

This bill would require a law enforcement agency to confirm that a person will be prosecuted for the felony for which they are wanted before a local law enforcement agency takes possession of the person from another law enforcement agency. The hope is to avoid another incident like the one that occurred in San Francisco by making sure that if a person is transferred to a law enforcement agency they will be prosecuted and not let go, potentially in a city where they have no place to stay.

### 3. Broader Application?

The Committee may wish to consider whether this policy should apply even to those who are not subject to deportation. A person with an old warrant who is picked up in northern California and transferred to southern California for a case that is not prosecuted may face issues getting back home. A person let out of custody in a place far from their current home may not have the resources to return to their place of residence. Should agencies confirm the intent to prosecute before transferring anyone between jurisdictions?

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