SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1389	**Hearing Date:**	April 24, 2018
Author:	Anderson		
Version:	April 16, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Crimes: Supervised Release***

HISTORY

Source: Author

Prior Legislation: AB 1408 (Calderon), vetoed in 2017
SB 266 (Block), Ch. 706, Stats. of 2016
AB 63 (Patterson), failed Assembly Public Safety 2014
AB 109 (Committee on Budget), Ch. 15, Stats. of 2011

Support: California District Attorneys Association

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to: 1) require the California Department of Corrections and Rehabilitation (CDCR) to share information with local law enforcement agencies regarding a person's prior parole record; 2) require probation offices to share information regarding a person's post-release community supervision (PRCS) record with CDCR upon request; 3) require probation offices to notify the court and specified entities when it employs flash incarceration; and 4) codify the Board of Parole Hearing's (BPH) existing regulations which require the board to consider an inmate's entire criminal history when making a parole suitability determination.

Existing law requires the parole board to grant parole unless it determines that the gravity of the current offense or offenses, or the timing and gravity of current or past offense or offenses, is such that consideration of the public safety requires a lengthier period of incarceration for the inmate. (Pen. Code, § 3041, subd. (b).)

Existing law provides that the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the CDCR:

a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);

b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);

c) A person serving a Three-Strikes sentence;

d) A high-risk sex offender;

e) A mentally disordered offender;

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 was sentenced to state prison; and,

g) A person subject to lifetime parole at the time of the commission of the offense that resulted in a state prison sentence. (Pen. Code, § 3000.08, subds. (a) and (i).)

Existing law requires all other offenders released from prison to be placed on PRCS under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b) & 3451.)

Existing law requires all persons paroled before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09.)

Existing law requires CDCR to provide local law enforcement agencies with specified information about an inmate released on parole or PRCS. (Pen. Code, § 3003, subd. (e)(1).)

Existing law provides that if any parole agent or peace officer has probable cause to believe that a person subject to parole is violating any term or condition of his or her parole, the agent or officer may, without warrant, arrest the person and bring him or her before the court. (Pen. Code, § 3000.08, subd. (c).)

Existing law authorizes the supervising parole agency, upon a finding of good cause that a person subject to parole has committed a violation of law or violated his or her conditions of parole, to impose additional and appropriate conditions of supervision and to impose intermediate sanctions, including flash incarceration. (Pen. Code, § 3000.08, subd. (d).)

Existing law provides that if a peace officer has probable cause to believe a person subject to PRCS is violating any term or condition of his or her release, the officer may, without a warrant, arrest the person and bring him or her before the supervising county agency. An officer employed by the supervising county agency may seek a warrant and a court shall have the authority to issue a warrant for that person's arrest. (Pen. Code, § 3455, subd. (b)(1).)

Existing law authorizes intermediate sanctions, including flash incarceration, for violating the terms of PRCS. (Pen. Code, § 3454, subd. (b).)

Existing law defines "flash incarceration" as a period of detention in a city or county jail due to a violation of a person's conditions of parole or PRCS. The length of the detention period can range between one and 10 consecutive days in a county jail. (Pen. Code, §§ 3000.08, subd. (e), and 3454, subd. (c).)

Existing law provides that if the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions are not appropriate, the supervising county agency must petition the court to revoke, modify, or terminate PRCS. The revocation hearing officer is authorized to do all of the following upon a finding that a person has violated the conditions of PRCS:

- Return the person to PRCS with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- Revoke and terminate PRCS and order the person to confinement in a county jail.
- Refer the person to a reentry court, as specified, or other evidence-based program in the court's discretion. (Pen. Code, § 3455, subd. (a).)

Existing law specifies that if parole is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days. (Pen. Code, § 3000.08, subd. (g).)

Existing law specifies that if PRCS is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, § 3455, subd. (d).)

This bill requires CDCR to provide a local law enforcement agency with copies of an inmate's record of supervision during any period of parole.

This bill requires county probation offices to share information regarding a person's PRCS records with CDCR upon request.

This bill specifies that the parole board must consider an inmate's entire criminal history, including all current and past convictions, in determining whether to grant parole.

This bill requires the probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

This bill permits a peace officer, including a probation officer, to arrest a person on PRCS if he or she has failed to appear at a hearing on a motion to revoke, modify, or terminate PRCS.

COMMENTS

1. Need for This Bill

According to the author:

> With the reduction in population at CDCR ordered by the Court, and the number of criminal justice reforms that followed to accommodate that order, California has experienced difficulty in managing the "non-serious, non-violent" offenders who have flooded the local court and probation systems.
>
> This bill makes a number of reasonable changes to existing law including: 1) providing additional information to law enforcement as to who is being released in their community; and 2) allowing parole authorities to review the entire record when making decisions. Law enforcement and the courts have been steadfast in dealing with the recent reforms but need the adjustments as outlined in this bill to

assist in maintaining public safety in the community while at the same time maintaining the commitment to a reduction in prison overcrowding.

2. Changes to Parole Due to Realignment

Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents working for CDCR's Division of Adult Parole Operations (DAPO). If it was alleged that a parolee had violated a condition of parole, he or she would have a revocation proceeding before the Board of Parole Hearings (BPH). If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. All other inmates released from prison are subject to up to three years of PRCS under local supervision.

Realignment also changed where an offender is incarcerated for violating the terms of his or her supervision. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve the revocation term in county jail. The only offenders who are eligible for return to prison for violating parole are life-term inmates paroled pursuant to Penal Code section 3000.1 (e.g., those convicted of murder, specific life term sex offenses, etc.).

Additionally, realignment changed the process for revocation hearings, which was implemented in phases. Until July 1, 2013, individuals supervised on parole by state agents continued to have revocation hearings before the BPH. After July 1, 2013, trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under CDCR's jurisdiction. In contrast, since the inception of realignment, individuals placed on PRCS appear before the trial court for revocation hearings.

3. Requirement that CDCR Share Parole Records with Local Law Enforcement Agencies

This bill would require CDCR's Division of Adult Parole Operations (DAPO) to share copies of the record of supervision during any prior parole period with local law enforcement agencies, as specified. The record of supervision contains information regarding all supervision contacts that a parole agent has with the parolee. The record of supervision is typically well over 50 pages per parole term per parolee, and prior to 2017 was a handwritten document. These records are maintained in the field file at the individual parole unit where the parolee is supervised. The record of supervision is retained for one year and then destroyed, with the exception of records related to the supervision of sex offenders, which are maintained indefinitely.

To comply with this bill, CDCR would need to upload all paper records of supervision into the Strategic Offender Management System (SOMS), the Parole Law Enforcement Automated Data System (LEADS), and the Electronic Records Management System (ERMS) as well as modify these databases in order to grant local law enforcement agencies access to those records. Additionally, CDCR would need to develop a method for keeping confidential information contained within parole records, including victim and witness information as well as information

protected by the Health Insurance Portability and Accountability Act, from being viewed absent a specific need by local law enforcement.

4. Flash Incarceration

Changes to the supervision of inmates released from prison included establishing a new sanction for a violation of supervised release known as flash incarceration. Flash incarceration is defined as "a period of detention in county jail due to a violation of a parolee's conditions of parole" that "can range between one and 10 consecutive days." (Pen. Code, §§ 3000.08, subd. (e) & 3455, subd. (c).)

With the creation of PRCS, the supervising agency was authorized to employ "flash incarceration" as an "intermediate sanction" for responding to both parole and PRCS violations. (See Pen. Code, §§ 3454, subd. (c) & 3000.08 (e).) The Legislative Analyst's Office explained the context and reasoning behind "flash incarceration" as part of realignment: "[T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings." (Legislative Analyst's Office, The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update (Feb. 22, 2012), pp. 8-9.)[1]

The intent of intermediate sanctions, like flash incarceration, is to balance holding offenders accountable for violating the conditions of supervision while creating shorter disruptions from work, home, or programming which often results from longer term revocations. Because flash incarceration has been used successfully by probation officers on persons supervised under PRCS, the Chief Probation Officers sponsored SB 266 (Block), Chapter 706, Statutes of 2016, to extend the use of flash incarceration to individuals granted probation or placed on mandatory supervision.

This bill requires a probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration. This bill also specifies that a probation officer who has probable cause to believe that a person on PRCS is violating any term or condition of his or her release may arrest the person, without a warrant, and bring him or her before the supervising county agency, as specified. The bill further provides that a peace officer, including a probation officer, is authorized to arrest a person on PRCS who has failed to appear at a hearing to revoke, modify, or terminate PRCS.

5. Parole Suitability

Inmates who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. The Penal Code provides that the parole board "shall grant parole to an

[1] Flash incarceration as intermediate sanction for offenders under state supervision who violate a term of their parole became effective July 1, 2013. (Pen. Code, § 3000.08, subd. (d).) Despite the authority to impose terms of flash incarceration upon state-supervised parolees, DAPO does not to utilize flash incarceration. (See *Valdivia v. Brown*, Response to May 6 Order, filed 05/28/13, p. 17.)

inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an inmate's suitability for parole is whether the inmate currently poses an unreasonable risk of danger to society. (*In re Shaputis* (2008) 44 Cal.4th 1241.) The decision whether to grant parole is an inherently subjective determination. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.)

In deciding whether to grant parole, the BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, § 2402, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including "the circumstances of the prisoner's: social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release." (Cal. Code Regs., tit. 15, §§ 2281, subd. (b) & 2402, subd. (b).) The regulations further state that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (Cal. Code Regs., tit. 15, § 2402, subd. (b).) Although the BPH is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense "continue to be predictive of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.)

This bill requires the BPH to consider an inmate's entire criminal history, not just the most recent commitment offense, in determining whether the inmate is suitable for parole. Although not delineated in statute, the BPH is already required to consider this information per regulations for indeterminately sentenced inmates. Proposition 57 regulations, which pertain to the non-violent parole process, also require the BPH to consider an inmate's criminal history.

6. Governor's Veto

A substantially similar bill, AB 1408, was vetoed by the Governor last year. The Governor's veto was primarily concerned with a provision in AB 1408 that would have required a probation officer to petition the court to revoke, modify, or terminate PRCS upon a supervised person's third violation of the terms of his or her release. This provision is not included in SB 1389.

7. Argument in Support

According to the California District Attorneys Association:

> Senate Bill 1389…would require the Department of Corrections and Rehabilitation to provide local law enforcement agencies with the record of supervision of an inmate released by the department to the agency's jurisdiction on parole or postrelease community supervision.
>
> Information sharing about convicted criminals is good policy and makes sense from a public safety standpoint. Requiring a parole panel or board to consider all of an offender's convictions, past and present, makes for an informed decision.

8. Argument in Opposition

The California Public Defenders write:

> SB 1389 is essentially the same as AB 1408 (Calderon) which was vetoed by the Governor last year.
>
> …SB 1389 is designed to make it more difficult for inmates to be paroled by allowing consideration of their entire criminal history, and more difficult for them to be successful on supervision once released on parole or post-release community supervision by expanding the violation and arrest provisions. This is one of the myriad bills that aims to push back on the progress made towards more evidence-based release and supervision decisions under public safety realignment.

-- END --