SENATE COMMITTEE ON PUBLIC SAFETY
SENATOR LONI HANCOCK, CHAIR
2015 - 2016 REGULAR

Bill No:	SB 517	**Hearing Date:**	April 14, 2015
Author:	Monning		
Version:	February 26, 2015		
Urgency:	No	**Fiscal:**	No
Consultant:	JM		

Subject: ***Supervised Persons: Release***

HISTORY

Source: Judicial Council of California

Prior Legislation: AB 109 (Committee on Budget) Ch. 15, Stats. 2011
AB 117 (Committee on Budget) Ch. 39, Stats. 2011

Support: Legal Services for Prisoners with Children; California Public Defenders Association, California Judges Association

Opposition: None known

PURPOSE

The purpose of this bill is to authorize a court to release a person on mandatory supervision, post release community supervision or parole who has been alleged to have violated a condition of supervision, unless the supervised person is serving a term of flash incarceration.

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

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 person who committed a serious felony listed in Penal Code Section 1192.7(c);
- A person who committed a violent felony listed in Penal Code Section 667.5(c);
- A person serving a Three-Strikes sentence;
- A high risk sex offender;
- A mentally disordered offender;

- 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,

- 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, subd. (a) and (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(b).)

Existing law limits a PRCS term to three years. (Pen. Code § 3451(a).)

Existing law provides for intermediate sanctions for violating the terms of PRCS, including "flash incarceration" for up to 10 days. (Pen. Code § 3454.)

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).)

Existing law prohibits the return of an offender who violates conditions of PRCS to prison. (Pen. Code § 3458.)

Existing law specifies that a parolee held in custody for a pending parole violation before October 1, 2011, may be returned to state prison for the violation for period not to exceed 12 months. (Pen Code § 3057, subd. (a).)

Existing law specifies that a parolee held in custody for a pending parole violation on or after October 1, 2011 will be returned to county jail, rather than state prison, for up to 180 days of incarceration per revocation. (Pen. Code § 3056, subd. (a).)

Existing law generally authorizes the use of a penalty known as "flash incarceration"[1] for felons who have been released from prison, are subject to supervision by state parole or county probation, and are believed to have violated a condition of their supervision. (Penal Code §§ 3008.8, 3450.)

Existing law specifically authorizes county agencies responsible for supervising persons subject to postrelease community supervision[2] ("PRCS") to do the following:

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[1] Existing law, as enacted by the criminal justice realignment of 2011, includes legislative findings and declarations which, among other things, defines "community-based punishment" to mean "evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Intermediate sanctions may be provided by local public safety entities directly or through public or private correctional service providers and include, but are not limited to, the following: . . . Short-term 'flash' incarceration in jail for a period of not more than 10 days. . . ." (Pen. Code § 3450.)

[2] "Postrelease Community Supervision ("PRCS") generally provides that certain felons released from prison "shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency designated by each county's board of supervisors which is consistent with evidence-based practices, including, but not limited to, supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under postrelease supervision." (Pen. Code § 3451.)

> … [D]etermine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court . . . , or flash incarceration in a county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.
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> (c) "Flash incarceration" is a period of detention in county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations. (Pen. Code § 3454(b) and (c) (emphasis added).)

Existing law authorizes the use of flash incarceration on parolees, who are supervised by state parole. (Pen. Code § 3008.08, subds. (d), (e) and (f).)

Existing law provides that "flash incarceration" can be served in a city jail. (Pen. Code § 3000.08, subds. (d)-(e).)

This bill provides that if a person under supervision is alleged to have violated the terms of probation, mandatory supervision, post release community supervision or parole, the court may order release of the person under any terms and conditions the court deems appropriate.

This bill provides that the authority and discretion of the court to release a person facing a revocation hearing does not apply if the person is serving a period of flash incarceration.

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. Need for This Bill

According to the author:

> Prior to the implementation of criminal justice realignment under AB 109, the California Department of Corrections and Rehabilitation had the authority to issue arrest warrants for parole violations along with issuing and recalling parole holds. While the courts were given the statutory authority to issue arrest warrants for parole violations under realignment, the legislation failed to give explicit statutory authority for the courts to recall a parole hold. Without this statutory authority, a supervising parole or probation officer has the sole authority over custody decisions of a supervised individual in jail on a parole hold.
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> When a supervised person is rearrested and placed in custody, the supervising officer can either impose sanctions on the offender, such as flash incarceration, or petition the courts to have their parole revoked. Until that happens, however, the courts have no statutory authority to release the individual from the parole hold. Additionally, an October 2014 appellate court decision, *Williams v. Superior* Court (2014) 230 Cal.App.4th 636, now requires the supervising officer to act within 10 days of placing a supervised person on a parole hold, by either imposing sanctions or initiating revocation proceedings with the courts.
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> SB 517 will provide the courts with discretion when determining the custody status of an individual on probation, parole, or post release community supervision who is placed in county jail on a parole hold for violating their terms

of supervision. This measure will correct an oversight of realignment and ensure that courts have the same authority CDCR had prior to realignment.

2. Changes to Parole and Other Forms of Supervision as a Result of Criminal Justice Realignment

Prior to realignment in 2011, inmates released from prison were placed on parole and supervised in the community by parole agents of the Department of Corrections and Rehabilitation (CDCR). 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 postrelease community supervision (PRCS) under local supervision. (Pen. Code §§ 3000.08, subds. (a)-(c) and 3451, subd. (a).)

Realignment also changed where an offender is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve the revocation term in county jail. There is a 180-day limit to incarceration. 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., murderers, specific life term sex offenses). (Pen. Code §§ 3056, subd. (a), 3455, subd. (c) and 3458.)

Additionally, realignment changed the process for revocation hearings, but this change is being implemented in phases. Until July 1, 2013, individuals supervised on parole by state agents continue to have revocation hearings before the BPH. After July 1, 2013, the trial courts will assume responsibility for holding all revocation hearings for those individuals who remain under the jurisdiction of CDCR. In contrast, since the inception of realignment, individuals placed on PRCS stopped appearing before the BPH for revocation hearings. Their revocation hearings are handled by the trial court. PRCS currently provides for lesser or "intermediate" sanctions before PRCS is revoked for a violation. This includes "flash incarceration" for up to 10 days. (Pen. Code § 3454.) Intermediate sanctions, including flash incarceration, will also be available for state parolees after July 1, 2013. (Pen. Code § 3000.08(d).)

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