

SENATE RULES COMMITTEE

AB 109

Office of Senate Floor Analyses

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THIRD READING

Bill No: AB 109
Author: Assembly Budget Committee
Amended: 3/14/11 in Senate
Vote: 27 - Urgency

PRIOR VOTES NOT RELEVANT

SENATE BUDGET & FISCAL REVIEW COMMITTEE: 11-5, 3/16/11
AYES: Leno, Alquist, DeSaulnier, Evans, Liu, Lowenthal, Rubio, Simitian,
Wright, Hancock, Wolk
NOES: Huff, Emmerson, Fuller, Anderson, La Malfa

SUBJECT: Budget Act of 2011: Public safety realignment

SOURCE: Author

DIGEST: This bill makes statutory changes that are necessary to implement provisions of the Budget Bill related to realignment of certain low level offenders, adult parolees, and juvenile offenders from state to local jurisdiction.

Senate Floor Amendments of 3/14/11 delete intent language and inserts language constituting the bill relative to the realignment of specified low level offenders.

ANALYSIS: This bill is related to the realignment of certain low level offenders, adult parolees, and juvenile offenders from state to local jurisdictions. It contains provisions necessary to implement the 2011-12 budget, including these key changes:

CONTINUED

1. Local Custody for Specified Felony Convictions. Existing law provides that a felony is a crime that is punishable by death or imprisonment in state prison. This bill revises this definition of a felony to include certain crimes that are punishable in jail for more than one year. Further, this bill amends Penal Code section 18 to provide that every offense declared to be a felony where the punishment does not specify imprisonment, as enumerated, shall be punishable pursuant to a new subdivision in Penal Code section 1170, concerning determinate sentencing. That new subdivision (Penal Code section 1170(h)) provides that a felony shall be punishable in county jail for the term applicable under current law – either 16 months, two or three years, or for the term otherwise provided in the underlying criminal statute – except in the following categorical cases, in which case, an executed sentence for a felony shall be served in state prison:
 - Where the defendant has a prior or current felony conviction for a serious felony (as described in section 1192.7(c)) or violent felony (as described in section 667.5(c));
 - Where the defendant is required to register as a sex offender, as specified; or
 - Where the defendant has a current conviction for specified crimes exempted from these provisions.
2. Electronic Monitoring Options for Jail Inmates. Provides expanded authority to county correctional administrators to use home detention electronic monitoring programs to supervise jail inmates, including those that would be realigned to local jurisdiction under this bill and those being held in lieu of bail. Provides that an escape or escape attempt made by an inmate on a home detention electronic monitoring program is a felony offense.
3. Local Partnership Plan. Existing law establishes local Community Corrections Partnerships in each county with membership primarily comprised of officials from various law enforcement and service provider agencies. This bill requires the Community Corrections Partnerships in each county to recommend to its county board of supervisors a plan for how to implement the 2011 public safety realignment. The bill further establishes an executive committee comprised of specified members of the partnership for purposes of developing the plan which may include recommendations to

maximize the effective investment in evidence-based correctional sanctions and programs.

4. Ability to Contract for State Prison Beds. Permits counties to contract with the California Department of Corrections and Rehabilitation for purpose of housing felony offenders.
5. Credits. Provides that jail inmates can earn up to two days of credits toward their sentence for every four days served based on good behavior, consistent with credit levels for prison inmates.
6. Maintains State Parole for Specified Offenders. Continues to require state parole supervision for those offenders already released from state prison and on state parole at the time the bill takes effect. For these offenders who would otherwise qualify for post-release supervision under this bill, provides for discharge from parole based on criteria similar to that provided for those offenders placed on post-release supervision under this bill. Further requires state parole supervision for offenders released from state prison whose current conviction is for a serious or violent offense, those who are third strikers, and those who are High Risk Sex Offenders. For those offenders released to state parole after the effective date of this bill, the terms of their parole supervision are unchanged from current law, except for some sex offenders, the parole period is increased by six months.
7. Post-Release Supervision – Realignment of Certain Adult Parolees. Requires that after July 1, 2011, all offenders released from prison who do not have current convictions for serious or violent felonies, who are not third strikers, and who are not High Risk Sex Offenders will be subject to post-release supervision by counties rather than subject to state parole supervision. The county agency responsible for post-release supervision is to be determined by the county boards of supervisors. The bill states that post-release supervision shall be consistent with evidence-based practices demonstrated to reduce recidivism. The bill further sets terms and conditions for offenders on post-release supervision and provides the agency responsible for post-release supervision with the authority to determine additional terms and conditions, as well as determine appropriate incentives, treatment and services, and graduated sanctions. Offenders would be on post-release supervision for up to three years with earlier discharge allowed if recommended by the supervising agency and approved by the court,

including following six consecutive months without a violation of the terms and conditions of post-release supervision.

8. Revocation Decisions by Courts. Requires that for all offenders subject to state parole or post-release supervision who commit a violation of the terms and conditions of parole or post-release supervision after this bill goes into effect be subject to revocation decisions by the courts. For those offenders who commit a parole violation and are awaiting a revocation proceeding prior to this bill taking effect, they will continue to be subject to revocation by the Board of Parole Hearings. In addition to revocation, courts are authorized to modify terms and conditions, add additional terms and conditions, and terminate supervision of those under its jurisdiction based on violations.
9. Revocation Terms Served in Jails. Requires revocation time for parolees and those on post-release supervision, except for those offenders who served life terms in prison, to be served in county jails rather than state prison. These offenders can be revoked for up to twelve months, though the bill encourages the use of flash incarceration. Offenders who served life terms in state prison will continue to be returned to state prison to serve any revocation terms of longer than 30 days.
10. Contracting for State Juvenile Justice Beds. Authorizes counties to enter into contracts with the state to provide for the admission of juvenile offenders to the Division of Juvenile Justice (DJJ). Only those counties that enter into contracts with the state may send juvenile offenders to DJJ. Only those juvenile offenders adjudicated for crimes for which they could currently be sent to state DJJ facilities would be eligible to come to DJJ under this bill.
11. Operative Date of July 1, 2011. The changes in this bill shall be applied prospectively beginning July 1, 2011.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

RJG:nl 3/17/11 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** **END** ****

CONCURRENCE IN SENATE AMENDMENTS
AB 109 (Budget Committee)
As Amended March 17, 2011
Majority vote

ASSEMBLY: (February 22, 2011) SENATE: 24-16 (March 17, 2011)
(vote not relevant)

SUMMARY: This is the 2011 Public Safety Realignment bill containing necessary statutory and technical changes to implement changes to the Budget Act of 2011.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Expand the authority of local correctional administrators to use alternative custody methods and establishes day for day credit for offenders serving time in a jail facility.
- 2) Make various changes to the Post-Release Supervision statutes as follows:
 - a) Specify the population to be released onto post-release supervision (non-violent/serious, no third strike conviction, no high risk sex offenders);
 - b) Require the Local Corrections Community partnership to create an implementation plan for post release supervision of offenders and establishes an executive committee within the partnership to make recommendations to county board of supervisors;
 - c) Require the county board of supervisors to designate a county agency to be responsible for post-release supervision;
 - d) Require notification by the California Department of Corrections and Rehabilitation (CDCR) to counties regarding who is being released into post release supervision;
 - e) Require offenders to enter into a post-release community supervision agreement, which includes terms and conditions;
 - f) Require the court to establish a process to determine violations of conditions of post-release supervision and revocations; and,
 - g) Set parameters for one time offenders to be on post-release supervision and provides authority for release.
- 3) Make various changes to State Parole statutes as follows:
 - a) Specify who remains on state parole (violent/serious conviction, third strike conviction, high risk sex offenders);
 - b) Specify that only lifers can be returned to state prison for a parole violation;
 - c) Specify CDCR's jurisdiction over all offenders currently on parole; and,

- d) Add the courts as the authority for determining revocations.
- 4) Make various changes to Low Level Offender statutes as follows:
- a) Redefine a felony to include imprisonment in a county jail for more than a year;
 - b) Change all enumerated penalty code sections to include the phrase "pursuant to subdivision (h) of Penal Code Section (PC) 1170;"
 - c) Amend PC Section 1170 to include (h), which provides 16 months, two, or three years if the punishment is specified to be served in county jail unless the person has a prior violent, serious, or sex offense (in which case they serve time in state prison); and,
 - d) Provide that counties can contract with the state to house felony offenders.
- 5) Stop state intake and allows local agencies to contract with CDCR for housing juvenile offenders.
- 6) Stipulate that this act will become operative only upon creation of a community corrections grant program and upon an appropriation to fund the grant program.

AS PASSED BY THE ASSEMBLY, this bill expressed the intent of the Legislature to enact statutory changes relating to the 2011 Budget Act.

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FN: 0000087