

SENATE RULES COMMITTEE

AB 117

Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 117
Author: Assembly Budget Committee
Amended: 6/28/11 in Senate
Vote: 21

PRIOR VOTES NOT RELEVANT

SUBJECT: Budget Act of 2011: Criminal Justice Realignment

SOURCE: Author

DIGEST: This bill makes specified corrections to AB 109 (Assembly Budget Committee), Chapter 15, Statutes of 2011, concerning public safety realignment of certain felons, adult parolees, and juvenile offenders from state to local jurisdictions.

Senate Floor Amendments of 6/28/11:

1. Delete the following sections from this bill: Section 2, amending Penal Code Section 113; Section 3, amending Penal Code Section 114; and Section 18.
2. Appropriate, in addition to the amounts appropriated in the Budget Act of 2011, \$27 million to the Department of Corrections and Rehabilitation (CDCR) for the purpose of state operations in the 2011-2012 fiscal year.
3. Make substantive amendments to clarify, conform and tighten specified statutory provisions to the revisions made in AB 109.

CONTINUED

4. Change the operative date of AB 109 from July 1, 2011 to October 1, 2011, a change reflected in numerous sections.
5. Change the operative date of AB 109 for when courts shall assume specified jurisdiction concerning felons subject to post-prison supervision from July 1, 2011 to July 1, 2013.
6. Double-joint the bill with AB 116 (Assembly Budget Committee).

ANALYSIS: Existing law provides that certain specified felonies are punishable by incarceration in state prison. If AB 109 of the 2011-12 Regular Session becomes operative, certain of those felonies shall instead be punishable by incarceration in a county jail.

Community Corrections Partnerships; Local Realignment Plans

Penal Code Section 1230, created by SB 678 (Chapter 608, Statutes of 2009) to establish a local "Community Corrections Partnership," is amended to allow for a designee to be appointed by the board of supervisors for its member position, as specified.

Under this bill, Penal Code Section 1230.1 is amended to provided that the local plan recommended to the county board of supervisors for the implementation of the 2011 public safety realignment shall be voted on by the executive committee designated in this section, and to revise the composition of the executive committee of each county's Community Corrections Partnership (CCP) to provide that the chief probation officer of the county is the chair; to include the county's district attorney, public defender and, as designated by the county board of supervisors, the head of the county department of social services, mental health or alcohol and substance abuse programs, and the presiding judge of the superior court or his or her designee, and to remove from the CCP executive committee a county supervisor or the chief administrative officer for the county and the head of the county department of social services. With these amendments the executive committee of each county's CCP would be chief probation officer (chair); a chief of police; the sheriff; the district attorney; the public defender; the presiding judge or his/her designee; and a county department head, as identified above. This bill also provides that the plan shall be deemed accepted by the board of supervisors unless it is rejected by a vote of 4/5ths of the board, in which case the plan goes back to the CCP for further consideration.

Local Home Detention Electronic Monitoring Programs

Penal Code Section 1203.018, as added by AB 109 pertaining to the authority of county correctional administrators to use home detention electronic monitoring programs to supervise jail inmates, is amended to make a technical correction to the language, and to conform the punishment for a violation of this provision (a misdemeanor under AB 109) to the punishments provided in existing law applicable to persons confined in county custodial facilities, or otherwise subject to county constructive custody, as specified in Penal Code Section 4532 (ranging from a misdemeanor to a felony depending upon enumerated circumstances).

Sentencing

This bill excludes the following crimes from the provisions of AB 109 concerning felonies subject to imprisonment in county jail, and thus provides that executed sentences for these felonies shall be served in state prison:

1. Penal Code Section 290.018 (violation of sex offender register laws).
2. Penal Code Section 422 (criminal threats; see Penal Code Section 1192.7(c)(38))
3. Penal Code Section 12021.5(b) (relating to firearm/street gang crime)
4. Penal Code Section 12022.5 (personal use of a firearm in commission of a felony; see Penal Code Section 1192.7(c)(8))
5. Penal Code Section 12022(b)(1) (use of deadly/dangerous weapon during a felony)
6. Penal Code Section 12022(b)(2) (armed with firearm in commission of a felony, carjacking prior)
7. Penal Code Section 12022.9 (enhancement for committing or attempting felony where injury occurs to pregnant woman resulting in termination of pregnancy)
8. Penal Code Section 12025(b)(3) (carrying concealed weapon within any vehicle)
9. Vehicle Code Section 23109 (speed contest with prior -- proximate causes serious bodily injury)
10. Vehicle Code Section 23110(b) (throwing specified materials at vehicles with intent to do great bodily injury)

CONTINUED

11. Penal Code Section 273.4 (specified child injury felony)
12. Penal Code Section 600(d) (relating to inflicting great bodily injury on a peace officer)
13. Penal Code Section 245(a)(1) (assault – personal use of a deadly weapon)
14. Penal Code Section 455 (relating to arson)
15. Penal Code Section 11418(b) or 11418(c) per Penal Code Section 667.5(c)(23) (pertaining generally to weapons of mass destruction)
16. Penal Code Section 11418(d) (pathogen development for criminal purpose)

Penal Code Section 1170 (f), as amended by AB 109, is amended to delete the cross-references to Penal Code Sections 3000 and 3057 (pertaining to parole for determinately sentenced inmates).

Penal Code Section 1170, as amended by AB 109, which specifies that defendants with a prior or current conviction for a serious, violent or sex offense shall serve an executed sentence for a felony in state prison, is amended to expressly state that any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385, as specified.

Penal Code Section 1170(h), which was enacted by AB 109 to specify which felonies shall be punishable by a term of imprisonment in county jail, is amended to provide that a judge, when imposing a sentence pursuant to this section, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

Penal Code Section 667.5(b), as amended by AB 109, is amended to clarify the application of felony enhancements for prior prison terms, as specified.

Penal Code Section 800, pertaining to the statute of limitations, is amended to delete the reference in the current statute to state prison, thereby maintaining the existing application of this limitations period.

Aggregate Terms

CONTINUED

Penal Code Section 1170.1(a), pertaining to aggregate terms for multiple felony convictions, is amended to clarify that whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, as specified.

Parolees

Penal Code Section 3056 is amended to clarify the legal custody over parolees under the supervision of the CDCR when housed in county facilities, limit the jail sanction for revoked parolees subject to this section to a maximum of 180 days, and provide that certain paroled inmates (lifers) may be returned to prison by the Board of Parole Hearings until July 1, 2012, and by the courts thereafter, as specified.

Penal Code Section 2932, concerning loss of credits, is amended to include technical conforming language relating to its application to locally-confined persons, as specified.

Penal Code Section 3000, pertaining to parole, is amended to conform existing codified legislative intent language to AB 109 and clarify the parole authority, as specified.

Penal Code Section 3451 is amended to provide that persons released from prison for any crime where the person is required as a condition of parole to undergo treatment by the Department of Mental Health shall not be subject to community supervision provided by a county agency.

Penal Code Section 3454, as enacted by AB 109, concerning a locally-established review process for post-release supervision, is amended to include in that assessment the offender's risk of recidivism, and to further describe intermediate sanctions, including flash incarceration and reentry courts, as specified.

Penal Code Section 3000.09, as enacted by AB 109, concerning parolees released from state prison prior to July 1, 2011, is amended to clarify that these parolees who are being held in county jail for a parole violation on October 1, 2011, upon revocation, may be remanded to the state prison and that, upon completion of their revocation term, be subject to post-prison supervision as provided by AB 109 as revised by these amendments.

Role of the Courts; Post-Custodial Supervision

This bill clarifies, revises and specifies the role of the courts concerning persons subject to supervision following a term of imprisonment in state service, as follows:

1. A new Government Code section is enacted to authorize the courts to appoint hearing officers, with specified eligibility criteria, to conduct parole revocation hearings, determine violations of conditions of post release supervision, and to perform related duties, as specified.
2. Penal Code Section 3000.08, as enacted by AB 109, relating to persons released from prison who shall remain subject to CDCR supervision during their period of post-prison supervision, is amended to defer for two years the involvement of the court with respect to jurisdiction over these persons for purposes relating to parole revocation and imposition of a term of custody (until July 1, 2013), and to include among those persons who will be subject to parole supervision by CDCR persons who have been released for any crime where they are required to undergo treatment by the Department of Mental Health as a mentally ill offender.
3. Penal Code Section 3060 is added by this bill to grant the parole authority full power to suspend or revoke any parole, as specified, until July 1, 2013.
4. Penal Code Section 3000.08, as enacted by AB 109, is revised and restated to provide that, on and after July 1, 2013, courts will have the limited jurisdiction to hear petitions to revoke parole and impose a term of custody for persons released from prison, as specified; include clarifying, descriptive language concerning "flash incarceration"; provide that confinement for violations shall not exceed a period of 180 days in county jail; and provide a process for petitioning for revoking the parole of a supervised person, as specified.
5. Penal Code Section 3453, as enacted by AB 109, pertaining to an inmate's post-release community supervision agreement, is amended to specify for flash incarceration in jail of not more than 10, instead of seven, consecutive days, and to strike the limit of not more than 14 aggregate days.

6. Penal Code Section 3455, as enacted by AB 109, is amended to further describe the process for petitioning the court to address matters concerning post release supervision, including provisions allowing for a waiver of rights and acceptance of proposed parole modifications, as specified.
7. Penal Code Section 3456, as enacted by AB 109, is amended to clarify the basis and process for discharge from post custodial supervision, as specified, and to expressly provide that a person who has been on post-release supervision continuously for one year with no violations shall be discharged from supervision within 30 days.
8. Penal Code Section 3015, relating to the existing parole reentry accountability program, is amended to conform to the post-release supervision provisions of AB 109, as specified.
9. Penal Code Section 4019, pertaining to jail credits, is amended to apply to persons confined following a violation of post-release community supervision or parole.
10. Penal Code Section 4115.55 is added to provide that upon agreement with the sheriff or director of the county department of corrections a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correctional facilities, with a January 1, 2015 sunset, as specified.
11. Penal Code Section 3073.1 is added to authorize counties to contract with CDCR to obtain day treatment and crisis care services for inmates with mental health problems who are released on post-release community supervision with mental health problems.
12. Penal Code Section 3000.1, pertaining to life-term parolees, is amended to state the Board of Parole Hearings' authority with respect to discharge and review matters, as specified.

This bill makes additional conforming changes consistent with these purposes.

Division of Juvenile Facilities

CONTINUED

This bill deletes placeholder language contained in AB 109, including the repeal of Welfare and Institutions Code Section 1710.5, concerning the provision of DJJ beds pursuant to a memorandum of agreement between DJJ and the state, and restore applicable statutory provisions concerning DJJ to how they were prior to AB 109. In this way this measure removes DJJ from the realignment contained in AB 109. This bill also makes a technical revision to Welfare and Institutions Code Section 1766.01.

Miscellaneous

Penal Code Section 17.5, containing legislative findings and declarations enacted in AB 109, is amended to make technical revisions, as specified.

Penal Code Section 830.5, pertaining to peace officers, is amended to technically conform to the post-release community supervision provisions of AB 109 as revised by the amendments to this bill, and to delete references in this section to the Office of the Inspector General, as specified.

Penal Code Section 3003, pertaining generally to return sites for parolees, is amended in subdivision (k) relating to the Law Enforcement Automated Data System to provide that prior to August 1, 2011, county agencies designated to perform post-release supervision shall so notify CDCR, as specified.

Penal Code Section 4011.10, pertaining to local law enforcement contracts for emergency health care services, is amended to apply to health care services, as specified. This bill also deletes the January 1, 2014 sunset to this provision.

Penal Code Section 2057, which authorizes counties to contract with CDCR for the commitment of persons who have suffered a felony conviction, is amended to provide that offenders sentenced to county jail that serve their sentence in state prison pursuant to this section are required to comply with specified rules and regulations of CDCR.

This bill includes technical chaptering amendments pertaining to provisions in AB 116 (Assembly Budget Committee) concerning the Office of the Inspector General.

Prior Legislation

AB 109 (Assembly Budget Committee), Chapter 15, Statutes of 2011,
passed the Senate (24-16) on March 17, 2011.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

In addition to the amounts appropriated in the Budget Act of 2011, an appropriation of \$27 million is provided to the CDCR for the purpose of state operations in the 2011-12 fiscal year, payable from the General Fund.

RJG:mw 6/28/11 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

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

CONCURRENCE IN SENATE AMENDMENTS

AB 117 (Budget Committee)

As Amended June 28, 2011

Majority vote. Budget Bill Appropriation Takes Effect Immediately

ASSEMBLY: (February 22, 2011) SENATE: 24-14 (June 28, 2011)
(vote not relevant)

SUMMARY: Makes statutory changes necessary to implement the Public Safety Realignment portions of the 2011-12 budget by making additional substantive and technical changes relevant to AB 109 (Budget Committee), Chapter 15, Statutes of 2011, pertaining to the realignment of certain low level felony offenders, and adult parolees from state to local jurisdiction.

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

- 1) Amend one Health and Safety Code section and various Penal Code sections to avoid conflict with the following initiatives:
 - a) California Proposition 21 passed in 2000 it increased a variety of criminal penalties for crimes committed by youth and incorporated many youth offenders into the adult criminal justice system;
 - b) California Proposition 69 passed in 2004 it allows for the collection of DNA samples from all felons and from people who have been arrested for certain crimes;
 - c) California Proposition 6 passed in 1998. The law puts horses (including ponies), donkeys, and mules under the same pet classification as dogs and cats, thus making it a felony for any person in the state to possess, transfer, receive, or hold any such animal with the intent to kill it, or have it killed, where the person knows, or should have known, that any part of the carcass will be used for human consumption. An additional provision makes it a misdemeanor to sell horseflesh within the state as meat intended for human consumption. The law further allows for anyone previously convicted of selling horsemeat to be charged with a felony in any future prosecutions for the same offense; and,
 - d) California Proposition 83 passed in 2006 (also known as the Sexual Predator Punishment and Control Act: Jessica's Law or simply, Jessica's Law).
- 2) Make technical reference change to Penal Code Section 3000.09 related to offenders that will continue to be supervised on state parole (serious, violent, third strike, and high risk sex offenders).
- 3) Remove an inadvertent drafting error by restoring "petty with a prior" penalties applicable to registered sex offenders and persons with violent or serious felony priors as enacted in AB 1844 (Fletcher), Chapter 219, Statutes of 2010.
- 4) Appropriate in addition to the amounts appropriated in the Budget Act of 2011, \$27 million to California Department of Corrections and Rehabilitation (CDCR) for the purpose of state operations in the 2011-2012 fiscal year.

- 5) Delay the operative date of AB 109 from July 1, 2011 to October 1, 2011, a change reflected in numerous sections.
- 6) Delay the operative date of AB 109 for when courts shall assume specified jurisdiction concerning felons subject to post-prison supervision from July 1, 2011 to July 1, 2013.
- 7) Exclude the following crimes from the provisions of AB 109 concerning felonies subject to imprisonment in county jail, and thus provide that executed sentences for these felonies shall be served in state prison:
 - a) Penal Code Section 290.018 (violation of sex offender register laws);
 - b) Penal Code Section 422 (criminal threats; see Penal Code Section 1192.7(c)(38));
 - c) Penal Code Section 12021.5(b) (relating to firearm/street gang crime);
 - d) Penal Code Section 12022.5 (personal use of a firearm in commission of a felony; see Penal Code Section 1192.7(c)(8));
 - e) Penal Code Section 12022(b)(1) (use of deadly/dangerous weapon during a felony);
 - f) Penal Code Section 12022(b)(2) (armed with firearm in commission of a felony, carjacking prior);
 - g) Penal Code Section 12022.9 (enhancement for committing or attempting felony where injury occurs to pregnant woman resulting in termination of pregnancy);
 - h) Penal Code Section 12025(b)(3) (carrying concealed weapon within any vehicle);
 - i) Vehicle Code Section 23109 (speed contest with prior -- proximate causes serious bodily injury);
 - j) Vehicle Code Section 23110(b) (throwing specified materials at vehicles with intent to do great bodily injury);
 - k) Penal Code Section 273.4 (specified child injury felony);
 - l) Penal Code Section 600(d) (relating to inflicting great bodily injury on a peace officer);
 - m) Penal Code Section 245(a)(1) (assault – personal use of a deadly weapon);
 - n) Penal Code Section 455 (relating to arson);
 - o) Penal Code Section 11418(b) or 11418(c) per Penal Code Section 667.5(c)(23) (pertaining generally to weapons of mass destruction); and,
 - p) Penal Code Section 11418(d) (pathogen development for criminal purpose).

- 8) Provide that the local plan recommended to the county board of supervisors for the implementation of the 2011 public safety realignment shall be voted on by the executive committee designated in this section, and to revise the composition of the executive committee of each county's Community Corrections Partnership ("CCP") to provide that the chief probation officer of the county is the chair; to include the county's district attorney, public defender and, as designated by the county board of supervisors, the head of the county department of social services, mental health or alcohol and substance abuse programs, and the presiding judge of the superior court or his or her designee, and to remove from the CCP executive committee a county supervisor or the chief administrative officer for the county and the head of the county department of social services. With these changes the executive committee of each county's CCP would be: chief probation officer (chair); a chief of police; the sheriff; the district attorney; the public defender; the presiding judge or his or her designee; and, a county department head, as identified above. This bill also provide that the plan shall be deemed accepted by the board of supervisors unless it is rejected by a vote of four-fifths of the board, in which case the plan goes back to the CCP for further consideration.
- 9) Make technical corrections to conform change AB 109 authority for correctional administrations to use home detention electronic monitoring programs to supervise jail inmates.
- 10) Make various changes to sentencing provisions of AB 109, including:
 - a) Penal Code Section 1170 (f), as amended by AB 109, is amended to delete the cross-references to Penal Code Section 3000 and 3057 (pertaining to parole for determinately sentenced inmates);
 - b) Penal Code Section 1170 as amended by AB 109, which specifies that defendants with a prior or current conviction for a serious, violent or sex offense shall serve an executed sentence for a felony in state prison, is amended to expressly state that any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385, as specified;
 - c) Penal Code Section 1170(h), which was enacted by AB 109 to specify which felonies shall be punishable by a term of imprisonment in county jail, is amended to provide that a judge, when imposing a sentence pursuant to this section, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence;
 - d) Penal Code Section 667.5(b) as amended by AB 109, is amended to clarify the application of felony enhancements for prior prison terms, as specified; and,
 - e) Penal Code Section 800 pertaining to the statute of limitations is amended to delete the reference in the current statute to state prison, thereby maintaining the existing application of this limitations period.
- 11) Clarify that whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, as specified.

12) Make various changes related to parolees, including:

- a) Penal Code Section 3056 is amended to clarify the legal custody over parolees under the supervision of the CDCR when housed in county facilities, limit the jail sanction for revoked parolees subject to this section to a maximum of 180 days, and provide that certain paroled inmates (lifers) may be returned to prison by the Board of Parole Hearings until July 1, 2012, and by the courts thereafter, as specified;
- b) Penal Code Section 2932 concerning loss of credits is amended to include technical conforming language relating to its application to locally-confined persons, as specified;
- c) Penal Code Section 3000 pertaining to parole is amended to conform existing codified legislative intent language to AB 109 and clarify the parole authority, as specified;
- d) Penal Code Section 3451 is amended to provide that persons released from prison for any crime where the person is required as a condition of parole to undergo treatment by the Department of Mental Health shall not be subject to community supervision provided by a county agency;
- e) Penal Code Section 3454 as enacted by AB 109, concerning a locally-established review process for post-release supervision, is amended to include in that assessment the offender's risk of recidivism, and to further describe intermediate sanctions, including flash incarceration and reentry courts, as specified; and,
- f) Penal Code Section 3000.09 as enacted by AB 109 concerning parolees released from state prison prior to July 1, 2011, is amended to clarify that these parolees who are being held in county jail for a parole violation on October 1, 2011, upon revocation, may be remanded to the state prison and that, upon completion of their revocation term, be subject to post-prison supervision as provided by AB 109 as revised by these amendments.

13) Clarify, revises and specifies the role of the courts concerning persons subject to supervision following a term of imprisonment in state service, as follows:

- a) Authorizes the courts to appoint hearing officers, with specified eligibility criteria, to conduct parole revocation hearings, determine violations of conditions of post release supervision, and to perform related duties, as specified;
- b) Amends AB 109 provisions relating to persons released from prison who shall remain subject to CDCR supervision during their period of post-prison supervision, to defer for two years the involvement of the court with respect to jurisdiction over these persons for purposes relating to parole revocation and imposition of a term of custody (until July 1, 2013), and to include among those persons who will be subject to parole supervision by CDCR persons who have been released for any crime where they are required to undergo treatment by the Department of Mental Health as a mentally ill offender;
- c) Grants the parole authority full power to suspend or revoke any parole, as specified, until July 1, 2013;
- d) Amends AB 109 to revised and restated that, on and after July 1, 2013, courts will have the limited jurisdiction to hear petitions to revoke parole and impose a term of custody for persons

released from prison, as specified; include clarifying, descriptive language concerning “flash incarceration”; provide that confinement for violations shall not exceed a period of 180 days in county jail; and, provide a process for petitioning for revoking the parole of a supervised person, as specified;

- e) Amends AB 109 provisions pertaining to an inmate’s post-release community supervision agreement, to specify for flash incarceration in jail of not more than 10, instead of 7, consecutive days, and to strike the limit of not more than 14 aggregate days;
- f) Amends AB 109 to further describe the process for petitioning the court to address matters concerning post release supervision, including provisions allowing for a waiver of rights and acceptance of proposed parole modifications, as specified;
- g) Amends AB 109 to clarify the basis and process for discharge from post custodial supervision, as specified, and to expressly provide that a person who has been on post-release supervision continuously for one year with no violations shall be discharged from supervision within 30 days;
- h) Conforms to the post-release supervision provisions of AB 109, as specified;
- i) Provides that upon agreement with the sheriff or director of the county department of corrections a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correctional facilities, with a January 1, 2015, sunset, as specified;
- j) Authorizes counties to contract with CDCR to obtain day treatment and crisis care services for inmates with mental health problems who are released on post-release community supervision with mental health problems; and,
- k) Amends Penal Code Section 3000.1, pertaining to life-term parolees, is amended to state the Board of Parole Hearings’ authority with respect to discharge and review matters, as specified.

14) Add an appropriation allowing this bill to take effect immediately upon enactment.

COMMENTS: In March of this year, the Legislature passed AB 109 (Budget Committee), Chapter 15, Statutes of 2011, which generally provides for the realignment of certain felons, adult parolees, and juvenile offenders from state to local jurisdictions. These amendments make specified technical and conforming revisions consistent with, and within the framework of, that measure.

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