

September 21, 2011

2011 Criminal Justice Realignment CLEAN-UP LEGISLATION SUMMARY OF MAJOR PROVISIONS

ABx1 17 (Blumenfield), Stats. 2011, ch. 12

The Governor has signed ABx1 17 (Blumenfield), Stats. 2011, ch. 12, which modifies criminal justice realignment. The bill enacts substantive, clarifying, conforming, and technical amendments to the criminal justice realignment enacted in 2011. Major court-related provisions and highlights are described below. This is not an exhaustive summary of the changes, but is intended to serve as a guide to the areas of significant interest.

SENTENCING

- **Adds to the felonies that must be sentenced to state prison instead of county jail:**
 - Battery on peace officer by gassing while in state prison (Penal Code, §4501.1)
 - Escape from prison facility (Penal Code, §4530)
 - Possession of firearm during street gang crime (Penal Code, §12021.5)
 - Unlawfully carrying a concealed firearm (Penal Code, §12025)

- **Removes from the felonies that must be sentenced to state prison, making the following offenses punishable in county jail:**
 - Sale or furnishing substance falsely represented to be a controlled substance (Health and Safety Code, §§11355 and 11382).

- **Clarifies that a felony sentence served in county jail under Section 1170(h), including the custody portion of a “split” sentence imposed under paragraph (5) of Section 1170(h), constitutes a prison prior for purposes of enhancements. (Penal Code, §667.5)**

- **Clarifies that the exceptions from felony county jail sentence include a prior out-of-state felony conviction that has all of the elements of a serious or violent felony. (Penal Code, §1170(h)(3))**

- **Clarifies that when imposing a felony sentence under Section 1170(h), the court may commit the defendant to county jail (1) for a full term in custody in accordance with the applicable sentencing law, or (2) for a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court’s discretion, during which time the defendant shall be supervised**

by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Penal Code, §1170(h)(5))

- **Clarifies that the period of supervision ordered by the court under Section 1170(h)(5) shall be mandatory, and may not be terminated earlier except by court order. (Penal Code §1170(h)(5))**

CUSTODY CREDITS

- **Clarifies that, during the period when the defendant is under mandatory supervision under Section 1170(h)(5), unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. (Penal Code, §1170(h)(5))**
- **Makes clarifying and conforming changes to the awarding of custody credits. (Penal Code, §§2932, 2933, 4019, and 4019.2)**
- **Clarifies that there is no custody credit for time served under flash incarceration. (Penal Code, §4019)**

POSTRELEASE COMMUNITY SUPERVISION

- **Clarifies that an inmate released to postrelease community supervision is subject to search or seizure, with or without a warrant, and revises the terms of the agreement that an inmate must sign to be released to PRCS to include this provision. (Penal Code, §§3067, 3453, and 3465)**
- **Corrects a drafting error, clarifying that flash incarceration is authorized for a period not to exceed 10 days. (Penal Code, §3450(b))**
- **Adds continuous electronic monitoring to the intermediate sanctions that may be imposed by a supervising agency without court involvement upon a violation of a term or condition of postrelease supervision. (Penal Code, §3454(b))**
- **Arrests, warrants, and detention:**
 - **Authorizes a peace officer who has probable cause to believe that a person subject to the postrelease community supervision is violating any term or condition of release to arrest the person without a warrant and bring the person before the postrelease supervising county agency. (Penal Code, §3455(a)(4))**

- Authorizes an officer employed by the supervising agency to seek a warrant from a court, and authorizes a court or its designated hearing officer to issue a warrant for that person's arrest. (Penal Code, §3455(a)(4))
 - Authorizes the court or its designated hearing officer to issue a warrant for any person who is the subject of a petition for revocation of supervision who has failed to appear for a hearing on the petition, or for any reason in the interests of justice. (Penal Code, §3455(a)(5))
 - Authorizes the court or its designated hearing officer to remand to custody a person who does appear at a hearing on a petition for revocation of supervision for any reason in the interests of justice. (Penal Code, §3455(a)(5))
 - Provides that a hearing on the petition for revocation shall be held within a reasonable time after the filing of the petition. Authorizes the supervising agency to determine that a person should remain in custody pending a revocation hearing, and may order the person confined without court involvement pending a revocation hearing, on a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or the person may not appear if released from custody, or for any reason in the interests of justice. (Penal Code, §3455(b))
- **Duration of postrelease community supervision:**
 - Provides that a person subject to postrelease community supervision shall not remain under supervision or in custody on or after three years from the date of the person's initial entry onto postrelease supervision, except when a bench or arrest warrant has been issued by a court or its designated hearing officer and the person has not appeared, during which time the supervision period shall be tolled. (Penal Code, §3455(d))
 - Provides that, during the time a warrant is outstanding, the supervision period shall be tolled and when the person appears before the court or its designated hearing officer the supervision period may be extended for a period equivalent to the time tolled. (Penal Code, §3455(d))
 - Clarifies that for purposes of early discharge from supervision by the supervising agency, "violation" means a violation that results in a custodial sanction. Clarifies that time during which a supervised person has absconded shall not be credited toward any period of postrelease supervision. (Penal Code, §3456)
- **Establishes a process for transfer by the supervising agency of postrelease supervision on determination by the supervising agency that the person no longer permanently resides in that agency's county. Court is not involved. (Penal Code, §3460)**

MISCELLANEOUS

- Criminal history – Requires the Department of Corrections and Rehabilitation to submit to the Department of Justice data to be included in the supervised release file of the California

Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. (Penal Code, §3003(l))

- SB 678 – Requires the Director of Finance, in consultation with the Administrative Office of the Courts, the Department of Corrections and Rehabilitation, and the Chief Probation Officers of California, to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 (SB 678 (Leno), Stats. 2009, ch. 608) that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 Public Safety realignment. (Penal Code, §1233.15)

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