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## Prison realignment reduces time Sacramento man will be behind bars

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In Sacramento, the face of realignment from prison to jail belongs to a 64-year-old heroin addict. He is a Vietnam War combat veteran, a disabled Oak Park diabetic with a bad liver and bad kidneys. He has a wife, two grown kids and a criminal record that goes back to the early Nixon administration.

Herbert Hale Sr. appeared in Sacramento Superior Court on Wednesday convicted yet again. This time, it resulted from a January arrest in which police pulled him over after he bought 10 bindles of black-tar heroin outside McClatchy Park. Jurors in August found him guilty of transportation of the drug.

At his sentencing this week, the probation department recommended that Hale be sentenced to state prison for 21 years. But Judge Ben Davidian said the probation report was completed before the state's new realignment plan for lower-level inmates went into effect on Oct. 1.

Instead of 21 years, he gave Hale a term in the Sacramento County jail from which he'll likely be free in 2 1/2 years.

With a profile closely matching the type of offender targeted by realignment, Hale became one of the first inmates in Sacramento to be sentenced to county jail instead of state prison since the law went on the books. His case demonstrates the law's potential to change not only where lower-level inmates serve time, but how the location figures to reduce the time they actually serve.

Knowing Hale would be ticketed under the realignment plan to county jail instead of state prison, a top official from the Sacramento District Attorney's Office appeared for Wednesday's hearing and laid out the shorter sentencing proposal that the judge readily adopted.

Supervising Deputy District Attorney Rod Norgaard, who took over during the sentencing, cited the realignment law for his office's suggestion on how to resolve Hale's case.

Norgaard asked Davidian to sentence Hale to five years for his conviction on one count of transportation of heroin. Norgaard then recommended six more years for two of Hale's past felonies – and a straight dismissal of eight other priors.

The prosecutor suggested that Hale be sentenced to county jail for six years and placed on probation for five – a so-called "split term" as written into the realignment law. With credit for time served and good behavior, Hale can expect to be released in March 2014, instead of sometime next decade.

Norgaard's boss, Assistant Chief Deputy District Attorney Steve Grippi, watched the sentencing from the gallery. Grippi said in interviews that before Oct. 1, his office probably would have submitted the case to the judge with the 21-year recommendation.

## **Factors to consider**

These days, Grippi said, his office must consider such factors as the impact on county resources of realigned inmates serving long stretches in the county jail.

"Frankly, we were being realistic about how much time a person can ... serve in a county jail facility," Grippi said. "Whether we call it a prison or a jail, it's still the same facility."

Grippi said his office has engaged in discussions with the Sheriff's Department "about the limitations of a county jail facility under the new law."

"I think in general we have concerns about it," Grippi said. "We're not necessarily unhappy about it. It's wait and see. But it is a reality, whether we like it or dislike it."

Sheriff's Lt. Mike Butler said county jails are lousy places for long-term lockups. They don't provide on-site medical or psychiatric services, nor do they have room for educational or rehabilitation programs. Butler said Sacramento's Rio Cosumnes Correctional Center already is overpopulated and understaffed, with more than 400 realigned inmates on the way.

Plus, "personal items like a TV or a hot plate? None of that will be available in jail. If you're going to be staying somewhere for that period of time, those creature comforts become more important to the inmate," he said.

Gov. Jerry Brown's administration crafted the realignment plan and the Democratic-controlled Legislature approved it this year. The action followed a U.S. Supreme Court decision that upheld a federal three-judge panel's order that California reduce the population in its 33 prisons from the current 142,750 to 110,000 by June 2013.

State corrections officials hope to get the numbers down by shifting inmates convicted of lower-level crimes to local custody and by no longer supervising parolees whose crimes also are less serious.

## **Local fears**

The fear among local law enforcement officials is that their overcrowded jails won't have room for the realigned offenders and that they will serve no time at all, or serve it via electronic monitoring or other forms of alternative sanctioning.

This week's prison population is down 4,960 from 147,710 on Sept. 28, the last reporting date before realignment. The numbers add up to a 3.35 percent prison population drop in 22 days.

Hale's attorney, Assistant Public Defender Kate Carlson, said "it's anyone's guess" how the realignment law affected her client's sentencing.

"I don't think we can know," Carlson said. "The judge never indicated what his plan was, had realignment not happened. I don't know if the judge could even say with any certainty."

Under realignment, Hale's offense no longer qualifies for a state prison term. It is now classified as a "triple non" – nonserious, nonviolent, nonsexual.

UC Berkeley law professor Barry Krisberg, who teaches a course on legal issues in the correctional system, said Hale's sentencing reflects another outcome envisioned by realignment proponents: Less-serious offenders retained in local custody will be serving less time behind bars.

"To argue that this guy has spent the better part of his life coming in and out of jail being convicted of drug offenses is in a way a demonstration that incarceration is not doing much of a job to deter this guy," Krisberg said.

"So this law is just designed to say: Let's be smarter. Let's make sure that violent people are behind bars – that's what we all want. And for the property offender, the drug offender types, let's come up with a penalty that can be served at the local level and won't cost as much."

From the bench, the judge, a veteran himself, said he felt "great empathy" for Hale. But Davidian rejected an effort by Hale's lawyer to divert him into drug treatment.

The judge cited the defendant's record and said he thought Hale was dealing the heroin to support his own habit, which made him ineligible for a diversion program. He called the district attorney's sentencing recommendation "a fair proposal given the nature of the crime here."

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