SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 171	**Hearing Date:**	May 12, 2015
Author:	Gaines		
Version:	April 15, 2015		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	AA		

Subject: ***County Jail Inmates: Involuntary Transfer***

HISTORY

Source: Author

Prior Legislation: AB 1512 (Stone) – Chapter 44, Statutes of 2014
SB 1021 (Comm. on Budget and Fisc. Rev.)–Chapter 41, Statutes of 2012
AB 109 (Committee on Budget) – Chapter 15, Statutes of 2011

Support: Unknown

Opposition: AllCare Alliance; American Civil Liberties Union; Californians United for a Responsible Budget; California Public Defenders Association; California Attorneys for Criminal Justice; Courage Campaign; Ella Baker; Friends Committee on Legislation of California; Legal Services for Prisoners with Children

PURPOSE

The purpose of this bill is to authorize sheriffs with overcrowded jails to transfer sentenced inmates to another state, county or private facility with or without the consent of the inmate, and for the state to reimburse the county for all costs to house and transport these transferred inmates, as specified.

Existing law authorizes the "board of supervisors of a county where, in the opinion of the sheriff or the director of the county department of corrections, adequate facilities are not available for prisoners who would otherwise be confined in its county adult detention facilities, . . . (to) enter into an agreement with the board or boards of supervisors of one or more counties whose county adult detention facilities are adequate for and accessible to the first county to permit commitment of sentenced misdemeanants, persons sentenced pursuant to subdivision (h) of Section 1170, and any persons required to serve a term of imprisonment in county adult detention facilities as a condition of probation, with the concurrence of that county's sheriff or director of its county department of corrections. When the agreement is in effect, commitments may be made by the court." (Penal Code § 4115.5(a).)

Existing law provides that a county entering into an agreement with another county pursuant to this section "shall report annually to the Board of State and Community Corrections on the number of offenders who otherwise would be under that county's jurisdiction but who are now being housed in another county's facility pursuant to (this section) and the reason for needing to house the offenders outside the county." (Penal Code § 4115.5(b).)

Existing law sunsets these provisions on July 1, 2018.

This bill would provide that, with "the approval of the county board of supervisors, the sheriff of a county may, if the county jail is over 80 percent capacity, contract with any state, county, or private jail or prison system in the United States for the confinement of inmates on behalf of the county."

This bill would authorize a sheriff to "transfer any person committed to the county jail upon conviction for a public offense to a facility with which the county has a contract, pursuant to the provisions of this bill) . . . with or without the inmate's consent. Transfers shall be at the discretion of the county sheriff."

This bill would authorize the county to "submit to the Department of Corrections and Rehabilitation an invoice showing the actual cost of housing and transportation of the inmates, including, but not limited to, personnel costs. The department shall reimburse the county for all costs incurred to house and transport inmates who are relocated pursuant to this section.

This bill would appropriate an unspecified amount from the General Fund to the Department of Corrections and Rehabilitation to pay the cost of housing and transportation of inmates incurred pursuant to its provisions.

Existing law provides that a "prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until legally discharged; and if the prisoner is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape; provided, however, that during the pendency of a criminal proceeding, the court before which said proceeding is pending may make a legal order, good cause appearing therefor, for the removal of the prisoner from the county jail in custody of the sheriff. In courts where there is a marshal, the marshal shall maintain custody of such prisoner while the prisoner is in the court facility pursuant to such court order. The superior court of the county may make a legal order, good cause appearing therefor, for the removal of prisoners confined in the county jail, after conviction, in the custody of the sheriff." (Penal Code § 4004.)

Existing law provides that "if facilities are no longer available in the county jail due to crowded conditions, a sheriff may transfer a person committed to the county jail upon conviction for a public offense to facilities which are available in the city jail," as specified. (*Id.*)

This bill would revise this section to include a cross-reference to its provisions.

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. Stated Need for This Bill

The author states:

> As a result of the prisoner lawsuit, Plata v. Brown, and a further ruling that California's prison overcrowding directly led to cruel and unusual punishment of CDCR inmates, California is under a federal mandate to reduce its prison population to 137.5-percent of design capacity.
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> As part of the solution to this mandate, California implemented a "realignment" plan. Due to this plan, thousands of what would have been CDCR inmates have been effectively transferred to county jails.

> Much like the prisons themselves, though, the county jails were overcrowded and could not absorb the increased caseload engendered by realignment. In practice, this has led to more criminals being out on the street and communities seeing an increase in crime.
>
> Although increased jail space would mitigate this problem, it is not a solution that provides immediate relief for crime-plagued communities, due to long timelines for new jail construction and the difficulty of securing funding.

2. Current Law; What This Bill Would Do

Current law authorizes counties facing jail capacity problems to enter into contracts with other California counties that have jail space to house their inmates. Prior to the enactment of SB 1021 in 2012, counties were allowed to contract with nearby counties for the housing of committed misdemeanants and any persons required to serve a term of imprisonment in a county jail as a condition of probation. SB 1021 expanded this authority by removing the requirement that the receiving county must be a nearby county, and authorizing any inmate confined to the county jail to be transferred through a county-to-county contract. By authorizing any inmate confined in a county jail to be transferred to another county, SB 1021 authorized the transfer of inmates sentenced under realignment as well as inmates who are awaiting trial.

AB 1512 (Stone), from last year, which was sponsored by the California State Sheriffs' Association, allowed counties to continue to transfer inmates by extending the sunset date established in SB 1021 from July 1, 2015 to July 1, 2018. On July 1, 2018, the law will revert back to the statute that existed prior to the version passed by SB 1021. AB 1512, additionally, excluded pre-trial inmates from being transferred through county-to-county transfers.

This bill would authorize sheriffs with overcrowded jails to transfer sentenced jail inmates to a far broader array of custodial facilities than is authorized under current law. Specifically, this bill would do the following:

- With the approval of the county board of supervisors and if the county jail is over 80 percent capacity, authorize the sheriff to contract with any state, county, or private jail or prison system in the United States for the confinement of inmates on behalf of the county;
- Authorize the sheriff, at his or her discretion, to transfer any person committed to the county jail upon conviction for a public offense to a facility with or without the inmate's consent;
- Authorize the county to submit to the Department of Corrections and Rehabilitation ("CDCR") an invoice showing the actual cost of housing and transportation of the inmates, including, but not limited to, personnel costs;
- Require CDCR to reimburse the county for all costs incurred to house and transport inmates who are relocated under this provision; and
- Appropriate an unspecified amount from the General Fund to CDCR to pay these costs.

3. Jail Overcrowding and the State's Response

Some counties have faced jail overcrowding challenges for many years. These issues pre-dated the public safety realignment of 2011, and increased immediately after realignment became law in October of 2011. The passage of Proposition 47 in November of 2014 may reverse this trend and reduce jail populations in some counties.[1]

Since 2007, the Legislature has approved over $2 billion in lease-revenue bonds to fund jail construction and modification, which is estimated to have added more than 14,000 jail beds across the state.[2] In February of 2014 (before the passage of Proposition 47) the Legislative Analyst's Office noted:

> (T)he statewide jail population has increased by 11,000 inmates since 2011, nearing the peak population of 82,000 inmates that occurred in 2007. Realignment is responsible for most of this increase.
>
> As of June 2013, 56 jail facilities in 25 counties had average daily populations that exceeded their rated capacities. In total, these facilities had 11,500 more inmates than their rated capacity. However, other jails had more capacity than inmates. Specifically, 65 jail facilities in 45 counties had an average daily population below rated capacity. In total, these facilities had 6,000 inmates less than their rated capacity. We note that there are some counties with multiple facilities where one facility may exceed its capacity while another may have available bed space. This typically occurs where the facilities serve different populations (by gender or security need for example) and the counties cannot move inmates between facilities.
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> We also note that many county jail facilities are under self-imposed or court-imposed population caps. As of June 2013, 39 facilities in 19 counties were operating under either self-imposed caps or court-imposed caps. When such facilities exceed their population caps, they release inmates early. For example, in the first half of 2013, an average of about 13,000 inmates per month were released early.[3]

A growing number of alternatives to jail custody are becoming employed to manage local offenders. A policy brief released this month by the Public Policy Institute of California explains:

> . . . (T)he overall number of individuals under correctional supervision has decreased in recent years. Although the shares of offenders in prison or jail versus parole or probation are unchanged, there has been a substantial increase in

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[1] *Los Angeles County Jail Population Plummets After Passage of Prop. 47* (January 25, 2015)(California County News)(http://californiacountynews.org/news/2015/01/los-angeles-county-jail-population-plummets-after-passage-prop-47.)

[2] *The 2014-15 Budget: A Review of the 2014 California Five-Year Infrastructure Plan* (Legislative Analyst's Office (http://www.lao.ca.gov/reports/2014/budget/infrastructure/infrastructure-plan-021014.pdf.); *Corrections Infrastructure Spending in California* , Brandon Martin, PPIC, (March 2015) (http://www.ppic.org/main/publication_show.asp?i=1142.)

[3] *The 2014-15 Budget: Governor's Criminal Justice Proposals* (Legislative Analyst's Office) February 19, 2014 (http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.pdf.)

> the percentage of offenders managed by the counties. These shifts have led many to consider how the state and its counties can make the best use of the scarcest and most expensive resource in the system: a jail or prison bed. . . .
>
> Counties appear to use a greater range of alternatives. Each county board of supervisors can authorize county correctional administrators to operate voluntary and involuntary alternative custody programs (ACP). Two of the most common programs, specifically mentioned in state law, are home detention and work release. Home detention programs require offenders to serve sentences in specific residential locations. Most home detention programs require participants to be monitored by electronic or GPS devices. Counties can develop their own program rules and criteria, including charging application and daily fees.
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> Counties also run work release programs that allow offenders sentenced to county jail to spend time on community service projects, including picking up roadside trash and repairing public buildings. Program participants receive one day of sentence credit for every day (8 to 10 hours) served in a work program. As with home detention, each county develops its own rules and criteria for participation in the program, including application and daily fees. . . .
>
> County alternative custody programs can now include newly realigned offenders — non-serious, non-violent, non-sexual (1170h) felons who previously were eligible for prison but now serve all or part of their sentences in county jail. Counties now have the option of placing these 1170h offenders in work release programs, home detention, or electronic monitoring programs at any point during their sentences. Offenders serving local sentences have been eligible for placement in alternative custody programs for years.[4]

Research suggests that incarceration is an expensive sanction which for many offenders may not be the most effective way of reducing recidivism. As explained by the PPIC report:

> Would relying less heavily on incarceration have an effect on recidivism? Studies generally find little to no difference in recidivism when comparing outcomes for incarcerated offenders with offenders sentenced to the community. A few studies show better outcomes for individuals placed in custody, but the effects are surprisingly small.
>
> Several studies show worse recidivism outcomes for incarcerated offenders, although this does not emerge as clearly in studies that make extensive adjustments for different groups of offenders. This holds true in recent research that factors the length of incarceration into the calculation of recidivism, which suggests that incarceration may be less beneficial than we might assume. Given that custodial placements are substantially more expensive than placements in the community, the implication is that widening the use of community-based punishments can conserve resources without necessarily worsening recidivism. . .

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[4] Alternatives to Incarceration in California (Brandon Martin and Ryken Grattet) (PPIC), April 2016 (http://www.ppic.org/content/pubs/report/R_415BMR.pdf) (footnotes omitted).

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The enactment of the 2011 public safety realignment included legislative findings and declarations that included the following:

- California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.
- Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society.[6]

Members may wish to discuss a number of issues concerning the impact and effectiveness of this bill.

WOULD THIS BILL IMPROVE OUTCOMES AMONG OFFENDERS SENTENCED TO JAIL?

WOULD THE COSTS OF THIS BILL OUTWEIGH ITS PUBLIC SAFETY BENEFITS?

WOULD THIS BILL PROVIDE AN EFFECTIVE TOOL FOR COUNTIES FACING OVERCROWDED JAILS?

HOW WOULD THIS BILL IMPACT AND COMPARE TO THE STATE'S NEED TO CONTRACT FOR OUT-OF-STATE AND PRIVATE CUSTODIAL BEDS FOR PRISON INMATES, AND HOW WOULD THIS IMPACT THE STATE'S ABILITY TO MEET THE PRISON CAPACITY REDUCTIONS ORDERED BY THE FEDERAL COURT?

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[5] *Id*. (footnotes omitted).

[6] Penal Code §§ 17.5, 3450.