
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 307 **Hearing Date:** April 14, 2015
Author: Pavley
Version: February 23, 2015
Urgency: No **Fiscal:** No
Consultant: AA

Subject: *Restraining Orders*

HISTORY

Source: Los Angeles District Attorney's Office

Prior Legislation: None

Support: California State Sheriffs' Association; Crime Victims United of California

Opposition: None Known

PURPOSE

The purpose of this bill is to include mandatory supervision, a sentencing feature for felonies subject to jail confinement, in protective order statutes regarding domestic violence, sex crimes and stalking, as specified.

Current law authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

Current law requires that in cases in which a criminal defendant has been convicted of a domestic violence or sex offense crime, as specified, the court at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court, and the protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. "It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family." (Penal Code § 136.2(i)(1).)

This bill would amend this provision to include defendants placed on mandatory supervision, a feature of a jail felony sentence pursuant to Penal Code section 1170(h).

Current law requires the sentencing court in a case where the defendant has been convicted of felony domestic violence to “also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.” (Penal Code § 273.5.)

This bill would amend this provision to include defendants placed on mandatory supervision, a feature of a jail felony sentence pursuant to Penal Code section 1170(h).

Current law requires the sentencing court in a stalking case to “also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. . . . This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.” (Penal Code § 646.9.)

This bill would amend this provision to include defendants placed on mandatory supervision, a feature of a jail felony sentence pursuant to Penal Code section 1170(h).

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:

SB 307 expands the potential use of criminal justice restraining orders when offenders are released to their communities. Currently, spouses, partners and other family members may receive restraining-order protections of up to 10 years when misdemeanor or felony abusers are released from jail or prison or placed on parole or probation. However, if an offender is sentenced to mandatory supervision in the community, victims are not protected unless they get a new restraining order in family court, which is a costly and time-consuming process that puts victims at risk of abuse and violence when perpetrators are released.

Under California’s Realignment Law of 2011, (Proposition 109), many criminal offenders were shifted from state prison to local jails or mandatory supervision in communities throughout California. SB 307 addresses an omission in the law, which fails to give courts the discretion to issue criminal restraining orders to victims of domestic violence or sex crimes if the offender is ordered to mandatory supervision, instead of incarceration in prison or jail or probation.

SB 307 closes a potentially life-threatening gap in the law by giving sentencing judges the tools they need to protect victims once their offenders are released back into the public. Family members and other victims are often the first target for abuse when a domestic-violence or sexual-assault offender is released to the community. This bill closes a dangerous loophole in the law by giving sentencing judges the ability to protect all victims from abuse once these offenders return to our streets.

In California, there are more than 410 domestic abuse incidents reported every day, according to the Department of Justice. According to the National Intimate Partner and Sexual Violence Survey, conducted by the Centers for Disease

Control and Prevention, there are an estimated two million female victims of rape in California, and an estimated 8.6 million survivors of sexual violence other than rape in the state.

2. What This Bill Would Do

This bill revises protective order provisions concerning defendants in domestic violence, stalking and certain sex crime cases to include offenders whose sentences includes “mandatory supervision.” As explained by the author, mandatory supervision is a sentencing feature created with the enactment of the criminal justice realignment in 2011 pursuant to AB 109. Specifically, Penal Code section 1170(h) – the “jail felony” piece of AB 109, provides:

(h)(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, 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. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, 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. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision. (emphasis added.)

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