SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 666	**Hearing Date:**	April 7, 2015
Author:	Stone		
Version:	February 27, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	JM		

Subject: ***Felons: Coming Upon Prison Property***

HISTORY

Source: Author

Prior Legislation: SB 1412 (Nielsen), Ch. 759, Stats. 2014

Support: Unknown

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to extend the existing statute requiring former California prison inmates to obtain permission before entering the grounds of a prison or jail to persons who have served term in a federal prison, a prison in another state or a felony jail term as specified.

Existing law includes a series of statutes describing misdemeanors and felonies committed by non-inmates that involve access to correctional facilities, contact with inmates and bringing contraband into a facility or camp. (Penal Code §§ 4570-4578.)

Existing law specifically provides that a person who has been previously convicted of a felony and confined in a prison is guilty of a felony if he or she "comes onto the grounds of" a prison, prison camp, prison forestry camp, jail or county road camp without the consent of the warden "or other officer in charge." The sentence for this felony is a prison term of 16 months, two years or three years and a fine of up to $10,000. (Penal Code § 4571.)

This bill extends this prohibition to any person who has previously served a prison term in a federal prison, a prison of any other state, or a county jail pursuant to Penal Code Section 1170, subdivision (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. State Need for This Bill

According to the author:

> California law clearly states that a person that has been previously convicted of a Felony and has been confined in a prison in the State of California cannot enter the grounds of any prison, prison camp or jail in the State.
>
> However, there exists a loophole in the current law. The statute does not exclude a person who has been previously convicted of a Felony and has been confined in a County Jail. The statute is also silent about those who have been convicted of a Felony in a different state or if they have been confined in a Federal Prison upon conviction of a Felony.
>
> SB 666 closes the loophole in current law by stating that, in addition to current law, no one that has been previously convicted of a Felony and served time in a County Jail, a prison in another state, or in a Federal prison, will be allowed on the grounds of a prison, prison camp, or jail in the state of California.

2. Recent Appellate Decision Requires Full Disclosure by Person Seeking Entry to Custodial Facility

People v. Gjersolvd (2014) 230 Cal.App.4th 746 interpreted and applied Penal Code Section 4571, the statute amended by this bill. As noted in the "Purpose" section above, the statute requires a convicted felon who has served a prison term to obtain permission to come "upon the grounds of [a prison or jail] or lands adjacent thereto…" Violation of Section 4571 is a felony. The defendant in *Gjersolvd* was convicted of entering the Riverside County Jail without informing institution officials that he had been convicted of a felony and served a prison term. *Gjersolvd* falsely told a deputy who screened visitors that he was a private investigator and showed the deputy his revoked private investigator's license.

The court - citing a 1980 opinion of the Attorney General[1] - found that a former prisoner must obtain "informed consent" from prison or jail authorities. To obtain informed consent, the former prisoner must clearly reveal his or her record. Informed consent allows "the warden or other officer in charge … the opportunity to exercise wide discretion whether … an ex-convict may receive consent to enter upon jail grounds." (*Id*., at pp. 750-751.)

The court in *Gjersolvd* observed "a notice is posted [at the jail] that states that persons convicted of a felony are not authorized to visit without approval." (*Id*., at p. 749.) Many other sections in the chapter that restrict access to prisoners or prohibit bringing contraband onto prison or jail grounds require the institution to post a notice of the prohibition or restriction. Section 4571 does not require such notice. Committee members may wish to consider whether this bill should be amended to include a notice requirement, especially in light of the expansion of the law in this bill.

[1] (63 Ops. Cal.Atty.Gen. 80-112)

3. What Constitutes being "Confined in a County Jail Pursuant to Penal Subdivision (h) of Penal Code Section 1170"?

Under existing law, it is clear who is covered by the statute amended by this bill – those persons convicted of a felony, sentenced to prison and actually confined in prison pursuant to an executed prison term. No other persons are confined in prison. Where a defendant is convicted of a felony and placed on probation, he or she would not be confined in a prison unless probation is revoked and a prison term is imposed and executed, although the terms of probation often include a period of jail confinement. A person who succeeds on felony probation would not be subject to the law amended by this bill, regardless of whether the person was confined in jail as a condition of probation.

However, it is not entirely clear to whom the phrase "confined in a county jail … pursuant to subdivision (h) of Section 1170" applies. The phrase would likely be interpreted to refer to a convicted defendant who served an "executed" felony sentence in jail after denial or revocation of probation. However "pursuant to subdivision (h) of Section 1170" could be interpreted to mean any felony crime for which the sentence is to be served in jail. Such a crime is commonly or colloquially described as "an 1170 (h) crime." Further, a person is confined in jail if incarceration is a condition of felony probation.

There are three classes of persons convicted of a felony and confined in a county jail:

1) Those defendants who were convicted of an 1170 (h) crime who served an executed sentence in the county jail. An executed sentence is one that is imposed and actually served.

2) Those defendants who were convicted of an 1170 (h) crime who served an executed "split sentence." A split sentence is an executed jail sentence for which the final portion of the sentence is served under "mandatory supervision" in the community. The supervision provided under mandatory supervision is equivalent to probation supervision.

3) Persons who were convicted of an 1170 (h) felony, granted probation and ordered to serve a term in a county jail as a condition of probation. As with prison sentences, in granting probation, the court can either impose the sentence, but stay execution of the sentence if while the defendant remains on probation, or stay imposition of sentence per se.

Defendants/inmates in classes 1) and 2) are equivalent to those who actually served a prison term under existing law. Defendants in class 3) are not equivalent to those covered by current law.

Members may wish to consider whether this bill should be clarified to provide that it applies to defendants who served an executed jail sentence pursuant to Section 1170, subdivision (h); for example:

> For purposes of this section, "confined in a county jail pursuant to subdivision (h) of Section 1170" means that a person served an executed felony jail sentence pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, including a split sentence imposed pursuant to paragraph (5).

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