

Worst Features of the Public Safety Realignment Bill (SB 85 (Senate Budget) and AB 109 (Assembly Budget))

- **Will transfer jurisdiction of many serious felony offenders from prison to jail.** The proposal will prevent thousands of convicted felons, including those with very long sentences (e.g., major drug sellers, child abusers under Penal Code § 273d), from being incarcerated in prison.
- **Will lead to early release of felons.** This proposal will have the effect of converting hundreds of felony offenses into de facto misdemeanors, because the bill gives sheriffs broader discretion than exists under current law to release them early, and over 2/3 of the state's jails are under federal or other court-imposed or self-imposed population caps.
- **Affects some very serious felony offenses.** Despite the proposal's provision permitting the continued sentencing of "serious" felons, "violent" felons, and those who are required to register as sex offenders to continue to be sent to prison, as well as a list of 44 additional felony offenses excluded from realignment at the request of law enforcement, **THE PROPOSAL WILL EXCLUDE FROM STATE PRISON HUNDREDS OF VERY SERIOUS FELONY OFFENSES.** These include:
 - **vehicular manslaughter while under the influence (not involving gross negligence)** (Penal Code § 191.5(c)(2)),
 - **felony child abuse** (pursuant to Penal Code § 273d),
 - **elder financial abuse** (various subdivisions of Penal Code § 368),
 - **street gang recruiting** (Penal Code § 186.26),
 - **assault by means of force likely to produce great bodily injury** (Penal Code § 245(a)(1)),
 - **hate crimes** (Penal Code § 422.7),
 - **practicing medicine without a license** (Business and Professions Code § 2052),
 - nearly all of the drug crimes, including **sales of drugs to children** and **manufacturing methamphetamine** (various Health and Safety Code sections),
 - violations of the **Gun Free School Zone Act** (Penal Code § 626.9),
 - **threats of harm against elected officials** (Penal Code § 76),
 - **insurrection** (Military and Veterans Code § 455),
 - **female genital mutilation** (Penal Code § 273.4),
 - **a second violation of domestic violence protective order** (Penal Code § 273.6),
 - **identity theft** (Penal Code § 530.5),
 - **knowingly giving/selling a firearm to a person prohibited from possessing a firearm because he or she was committed to a mental institution** (Welfare and Institutions Code § 8101),
 - **participation in an act of lynching** (Penal Code § 405b),
 - **willfully and intentionally (or with reckless disregard for the risk of great bodily injury or death of any person) emitting an air contaminant that results in unreasonable risk of great bodily injury or death of any person** (Health and Safety Code § 42400.3),
 - **mortgage fraud** (Penal Code § 532f),
 - **bribing electors to vote or not vote** (Elections Code § 18521), and
 - **over 500 of other** felony crimes (summarized in the Comments section of the SB 85 analysis, dozens of the most serious of which are highlighted in that analysis).
- **Increases early release credits for jail inmates.** The proposal extends 50% early release credits to misdemeanor offenders and other jail inmates not sentenced to state prison. **THIS CHANGE WAS ADDED BY SB 18XXX (DUCHENY) OF 2009 AND REPEALED BY SB 76 (COMMITTEE ON PUBLIC SAFETY) IN 2010 BECAUSE OF THE PUBLIC OUTCRY AGAINST IT.** The proposal further extends bad early release policies to undeserving misdemeanor (and felony probation) offenders in jail and those awaiting trial.

- **Will decrease time served by misdemeanor offenders, including those who commit particularly serious misdemeanor offenses.** Because there is not a sufficient number of excess county jail beds, shifting this population to county jails will have a strong tendency to squeeze out misdemeanor offenders (e.g., domestic violence, DUI), those serving a jail term as a condition of felony probation, and those awaiting trial. This may also have negative impacts on the bail industry as release on own recognizance releases and other releases by the sheriff increase.
- **Many types of offenders currently actively supervised by parole agents will go unmonitored under the bill's new "post supervision release" system.** Because local law enforcement and probation budgets have been slashed in recent years, there is not sufficient local manpower to seamlessly transfer this supervision function. Even if all necessary financial resources are transferred (highly doubtful), there will be substantial hiring and training issues. The transition will not occur smoothly and many felons will go unmonitored. Probation typically has far fewer interactions with the probationers they monitor than parole agents do with parolees. Crime will increase as a result of this transfer.
- **Will reduce post-release supervision (and some restrictions, including lifetime GPS monitoring) of some felony sex offenders.** This bill nearly abandons the state's responsibility for monitoring felons released from prison. The proposal is to only retain jurisdiction for third strikers (currently there are none on parole and there won't be any until around 2019), "high risk" sex offenders (recall that John Gardener -- the murderer of Amber Dubois and Chelsea King -- was not designated "high risk"), and those offenders with a CURRENT serious or violent felony conviction. All of the rest would be a local responsibility. Felony sex offenders who are not currently committed for a serious or violent felony and who are not designated as "high risk" would **evade the Jessica's Law lifetime GPS monitoring requirement**, since it applies to offenders "released on parole." (See Penal Code § 3004(b).) Also, current law prohibits felony sex offenders "released on parole" for a sex offense from living in a "single family dwelling" (with some exceptions) with another person required to register as a sex offender. By diverting offenders whose most recent offense was not a serious or violent felony and who are not designated as "high risk" (examples would include felony sexual battery, child pornography offenses, lewd and lascivious acts on a child ages 14-15 by a person at least 10 years older), those offenders would evade current anti-clustering prohibitions by virtue of not being "on parole."
- **Decreased accountability for parole violations.** The bill may end the possibility of revocation to state prison for a parole violation. (The language is somewhat ambiguous, but ambiguities are resolved in favor of the defendant in criminal law provisions.) This will decrease accountability. Some types of non-criminal parole violations are rather serious (gang members associating with each other, sex offenders contacting children). In many cases, parole violations are also criminal violations that are treated as parole violations to save court time and utilize the lower standard of proof. To the extent that prosecutors would have to charge them as crimes under the proposal's provisions, court and prosecution costs will rise and/or criminal conduct will be ignored. More likely, a combination will occur.