

A.B. 109 PLEA BARGAINING

MATERIALS BY HON. GILBERT T. BROWN

NOVEMBER 1, 2011

Plea and Sentencing Bargaining (Sentence after 10-1-11)

First you must agree on the your terms (acronyms)

1. Is it **Prison Eligible**?? N³WE Heinz (attached, ok, 72)
2. Is it **Probation Ineligible**?? Pages 85-88 of Felony Sentencing Handbook (FSH) most are plead & prove (P&P) attached.
 - a. Is it **Presumptive Probation Ineligible**? (Pages 78-82 of FSH), attached, (P & P)
3. What's the **spread**?? (Triad) Look them up. (FSH)
 - a. What's the max?
4. **Blended Sentence (BS)/Straight Time (ST)§1170(h)**
 - a. **Straight Time (ST)**—no Tail
 - b. **Blended Sentence Mandatory supervision (MS)** [Tail] (Not “probation”, Not post release community supervision, Not post conviction community supervision) after a certain part of the maximum has been served. Quibbling.
 - i. Who gives conditions of MS? Judge; Probation will supervise. Will have to spell out.
 - ii. Plea bargain conditions of MS—probably use same format as if it were “prob.”: Std T&Cs

OR

5. **Grant Probation** (Generally 5 years §1203.1)
 - a. What's the max? The min? Pages 84-85 FSH
 - b. If violates; 4a. or 4b. “Standard T&Cs.” Will have to spell out
 - c. How do you advise Δ of consequences? (Waiver forms attached) H^{1 + 2} & H³ [Work in Progress.]

APPENDIX II: Table of Crimes Requiring Commitment to State Prison Penal Code

PLEASE NOTE: The following table represents the authors' best attempt at identifying the crimes that must be sentenced to state prison. The material has been prepared from several different sources. It is incumbent upon the court and counsel to verify where a sentence imposed after October 1, 2011, must be served.

67 Bribing an executive officer
68 Executive or ministerial officer accepting a bribe
85 Bribing a legislator
86 Legislator accepting a bribe
92/93 Judicial bribery
141(b) Peace officer intentionally planting evidence
165 Local official accepting a bribe
186.11 Felony conviction with aggravated theft enhancement
186.22 Criminal street gangs
186.26 Street gang activity
186.33 Gang registration violation
191.5(c)(1) Vehicular manslaughter while intoxicated
222 Administering stupefying drugs to assist in commission of a felony
424 Misappropriation of public funds
243.7 Battery against a juror
243.9 Gassing a peace officer or local detention facility employee
245 Assault with a deadly weapon or force likely to inflict GBI
245(d) Assault on peace officer
266a Abduction or procurement by fraudulent inducement for prostitution
266e Purchasing a person for the purpose of prostitution or placing a person for immoral purposes
266f Sale of a person for immoral purposes
266h Pimping and pimping a minor
266i pandering and pandering with a minor
266j Procuring a child under 16 for lewd or lascivious acts
273a Felony child abuse likely to cause GBI or death
273ab Assault resulting in death of a child under age 8
273.4 Female genital mutilation
273.5 Felony domestic violence
290.018 Sex offender registration violations

State Prison Eligible revised 9-23-11 Couzens

298.2 Knowingly facilitating the collection of wrongfully attributed DNA specimens

299.5 Wrongful use of DNA specimens

347 Poisoning or adulterating food, medicine, drink, etc.

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368b Felony physical abuse of elder or dependent adult

417(c) Brandishing firearm in presence of peace officer

417.8 Felony brandishing firearm or deadly weapon to avoid arrest

422 Criminal threats

424 Misappropriation of public funds

452 Arson of inhabited structure or property

455 Burning forest land or property

504/514 Embezzlement of public funds

598c Possession or importation of horse meat

598d Offering horse meat for human consumption

600(d) Harming or interfering with police dog or horse causing GBI

646.9 Felony stalking

653f(b) Solicitation for murder

666(b) Petty theft with specified prior convictions

4501.1 Gassing

4530 Escape from prison facility

4532 Escape

11418 Use of weapon of mass destruction

12021/12021.1 Possession of a firearm by prohibited person

12021.5(b)(3),(4) Carrying firearm with detachable magazine

12022(b) Using a deadly weapon in commission of felony

12022.5 Using a firearm in commission of felony

12022.9 Infliction of injury causing termination of pregnancy

12025(b)(3) Carrying concealed firearm by gang member

12303.1/12303.2 Possession of an explosive or destructive device

Elections Code

18501 Public official who aids and abets voter fraud

Government Code

1090/1097 Conflict of interest by public officer or employee

1195 Taking subordinate pay

1855 Destruction of documents

Health and Safety Code

11353 Employment of minor to sell controlled substance

11354 Employment of minor to sell controlled substance

11361(a) & (b) Employment of minor to sell marijuana

State Prison Eligible revised 9-23-11 Couzens

11370.1 Possession of a controlled substance while armed with firearm

11380(a) Use of minor to transport/possess/possess for sale

120291 Knowingly exposure of person to HIV

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Vehicle Code

2800.2 Reckless evading a police officer

2800.3 Evading a peace officer causing death or serious bodily injury

20001 Hit and run driving causing death or injury

23109(f)(3) Causing serious bodily injury during speed contest

23110(b) Throwing object at motor vehicle with intent to cause GBI

23153 Driving under the influence causing injury

In addition to the forgoing specific crimes, a defendant convicted of any felony under any of the following circumstances must be sentenced to state prison:

(P.C. § 1170(h)(3))

1. Conviction of a current or prior serious or violent felony conviction listed in sections 667.5(c) or 1192.7(c), or

2. When the defendant is required to register as a sex offender under section 290;

or

3. When the defendant is convicted and sentenced for aggravated theft under the provisions of section 186.11.

III. Not Eligible

A. Serious Nature of Present Offense

1. Arson Offenses

1203.06(a)(3) Conviction of Pen C §451.5 (aggravated arson)

2. Sex Offenses

667.61(h) Conviction of specified serious sex offenses committed under designated aggravated circumstances

1203.065(a) Conviction of specified serious sex offenses

1203.066(a)(1) Violation of Pen C §288 (lewd act with child) or Pen C §288.5 (continuous sexual abuse of child) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury

1203.066(a)(6) Violation of Pen C §207, §209, or §209.5 (kidnapping) for the purpose of committing a violation of Pen C §288 or Pen C §288.5

3. Drug Offenses

1203.07(a) Specified Health and Safety Code violations involving heroin, PCP, or other specified controlled substances

4. Destructive Device Offenses

12311 Any violation of Pen C §§12303-12312

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B. Aggravated Nature of Present Offense

1. Firearm Use

1203.06(a)(1) Personal use of a firearm in committing or attempting one of specified felonies

12022.53(g) Personal use or discharge of firearm in committing or attempting one of specified felonies

2. Great Bodily Injury

1203.075(a) Personal infliction of great bodily injury in committing or attempting one of specified felonies

3. Minor Victim

1203.066(a)(2)-(4) Violation of Pen C §288 or §288.5 when bodily injury caused, weapon used, or stranger befriended child victim for purposes of committing the offense

1203.066(a)(7)-(9) Violation of Pen C §288 or §288.5 involving more than one victim, a victim under the age of 14, or the use of obscene matter or matter depicting sexual conduct, and specified mitigating circumstances are not present.

H & S C §11370(b) Violations involving specified controlled substances or narcotics when an adult involves a minor

4. Elderly or Disabled Victim

1203.09(a) Infliction of great bodily injury on elderly or disabled victim while committing or attempting one of specified felonies

5. Offense Committed While on Parole

- 1203.085(a) Conviction of any non-wobbler felony committed while on parole for a Pen C §667.5(c) violent felony or a Pen C §1192.7(c) serious felony
- 1203.085(b) Conviction of a Pen C §667.5(c) violent felony or a Pen C §1192.7(c) serious felony committed while on parole for any felony

6. Offense Committed While on Probation

- 1203(k) Conviction of Pen C §667.5(c) violent felony or Pen C §1192.7(c) serious felony while on probation for a felony offense

C. Prior Convictions

- 550(d) Two or more prior felony convictions of preparing/presenting false/fraudulent insurance claim and present felony conviction of same
- 667(c), 1170.12(a) Prior conviction of felony offense ("strike") defined in Pen C §667(d) or §1170.12(b) and present conviction of any felony
- 1203.044(b) Present conviction of theft exceeding \$50,000 in a single transaction or occurrence with prior conviction of an offense for which an enhancement under Pen C §12022.6 was found true
- 1203.055(c) Prior and present conviction of one of specified felonies committed against public transit vehicles or occupants
- 1203.06(a)(2) Prior conviction of one of specified felonies and personally armed with a firearm at the time of commission or arrest, in any subsequent felony

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- 1203.066(a)(5) Prior conviction of one of specified sex offenses and present conviction of Pen C §288 or Pen C §288.5
- 1203.07(a)(3) Prior conviction of violating Health & S C §11351 or §11352 and present conviction of violating Health & S C §11351 or §11352 involving heroin
- 1203.08 Present conviction of one of "designated" felonies with prior convictions under charges separately brought and tried two or more times of any "designated" felony
- H & S C §11370(a) Prior conviction of one of specified Health and Safety Code provisions involving controlled substances and present conviction of an offense involving one of specified controlled substances

Probation Eligibility

Note: All citations are to the Penal Code, unless otherwise noted.

I. Eligible Only in Unusual Case

A. Serious Nature of Present Offense

1. Sex Offenses

- 1203.065(b) Pen C §220 violation of assault with intent to commit one of specified sex offenses, violation of Pen C §261(a)(7), §286(k), or §288a(k)
- 1203.066(d) Certain Pen C §288 (lewd or lascivious act with a child) or §288.5 (continuous sexual abuse of child) violations when specified mitigating circumstances are present

2. Drug Offenses

- 1203(e)(8) Knowingly furnishing or giving away PCP
- 1203.073(b)(1), (b)(2) Possession for sale or sale of specified amounts of cocaine or methamphetamine in violation of Health & S C §11351, §11352, §11378; or §11379
- 1203.073(b)(3) Manufacturing controlled substances (except PCP) in violation of Health & S C §11379.6
- 1203.073(b)(4) Employing minor to manufacture or sell heroin, cocaine, cocaine base, or methamphetamine in violation of Health & S C §11353 or §11380
- 1203.073(b)(5) Possession for sale of specified amount of cocaine base in violation of Health & S C §11351.5
- 1203.073(b)(6), (b)(7) Transport or sale of any amount of cocaine base in violation of Health & S C §11352
- 1203.074 Violation of Health & S C §11366.6 (use of location specifically designed to suppress police entry in order to manufacture, sell, or possess for sale heroin, cocaine, cocaine base, PCP, amphetamine, methamphetamine, or LSD)

3. Burglary Offenses

- 462(a) Burglary of an inhabited dwelling, building, trailer coach, or floating home (first degree burglary)
- 462.5(a) Felony custodial institution burglary

4. Arson Offenses

- 454(c) Unlawful burning within area of insurrection or emergency
- 1203(e)(9) Violation of Pen C §451(a) (arson that causes great bodily injury), or §451(b) (arson of inhabited structure or property)

5. Escape Offenses

- 4532(c) Specified felony escape from secure main jail facility

6. Offenses by Public Officials

- 1203(e)(7) Bribery, embezzlement, or extortion by public official or peace officer in discharge of duties

7. Weapon Offenses

1203(e)(11) Possession of a short-barreled rifle or shotgun under Pen C §12020, a machinegun under Pen C §12220, or a silencer under Pen C §12520

8. Solicitation of a Minor

1203.046(a) Solicitation of a minor to commit certain felonies in violation of Pen C §653j

9. Failure To Register as Sex Offender

290.018(e) Felony violation of registration provisions under Pen C §290.018(b) and (d)

10. Unlawful Transfer of Firearm or Deadly Weapon

1203(e)(12) Knowing gift or sale of deadly weapon or firearm to mental patient in violation of Welf & I C §8101

1203(e)(13) Unlawful firearm transaction specified in Pen C §12072(g)(2) or (3)

B. Aggravated Nature of Present Offense**1. Armed With Deadly Weapon**

1203(e)(1) Armed with a deadly weapon, other than a firearm, at the time of commission or arrest, when convicted of specified felonies

2. Deadly Weapon Use

1203(e)(2) Used or attempted to use deadly weapon on a person in any offense

3. Great Bodily Injury

1203(e)(3) Willfully inflicted great bodily injury or torture in any offense

1203(e)(10) Inflicted great bodily injury or death by discharging a firearm from or at a vehicle

4. Excessive Theft

115(c)(2) Conviction in one proceeding of more than one violation of Pen C §115, attempt to record false or forged instrument, with intent to defraud, when violations resulted in cumulative financial loss exceeding \$100,000

1203.044(d) Theft exceeding \$100,000 in single transaction or occurrence

1203.045(a) Theft exceeding \$100,000

1203.048(a) Computer-related crimes (Pen C §§502, 502.1(b)) with taking or damage exceeding \$100,000

1203.049(a) Fraudulent appropriation or unauthorized use, transfer, sale, or purchase of food stamps committed by means of electronic transfer of benefits in violation of Welf & I C §10980(f) or (g) and amount exceeds \$100,000

5. Elderly Victim

1203.09(f) Assault with a deadly weapon, battery that results in physical injury requiring professional medical treatment, robbery, carjacking, or mayhem committed against a victim 60 years of age or older

C. Prior Convictions

115(c)(1) Prior conviction of Pen C §115, attempt to record false or forged instrument, with present conviction of that section in a separate proceeding

1203(e)(4) Two prior felony convictions

1203(e)(5) One prior felony conviction and present conviction of one of specified felonies

1203(e)(6) One prior felony conviction involving deadly weapon use or arming or infliction of great bodily injury

1203.073(b)(8) Prior and present conviction of certain offenses involving methamphetamine

II. Mandatory Jail Term as Condition of Probation Except in Unusual Case

186.22(c)	Participation in criminal street gang activity
186.22(d)	Wobbler committed at direction of or in association with a criminal street gang
208(c)	Kidnapping
209(c)	Kidnapping for ransom or extortion or to commit robbery or sex crime
209.5(c)	Kidnapping during commission of carjacking
463	Looting
626.9(g)	Possession of firearm on or within 1,000 feet of school grounds w/prior conviction of any felony, any crime punishable under Pen C §§12000-12101, or any misdemeanor offense specified in Pen C §12001.6
626.9(g)	Discharging or attempted discharge of firearm with reckless disregard of safety of others on or within 1,000 feet of school grounds w/prior conviction of any felony, any crime punishable under Pen C §§12000-12101, or any misdemeanor offense specified in Pen C §12001.6
1203.044(e)	Theft offenses involving amounts over \$50,000
1203.055(a)	Specified crimes against public transit vehicle or occupant
1203.076	Sale of cocaine or heroin (Health & S C §§11352, 11379.5)

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12021.1	Possession of a firearm with a prior conviction of one of specified felonies
12025(d)	Possession of a concealed firearm with a prior conviction of any felony or any misdemeanor offense specified in Pen C §12001.6
12031(a)(6)	Carrying loaded firearm w/pc of any offense specified in Pen C §12001.6 or any crime punishable under Pen C §§12000-12101

FELONY PLEA WAIVER [§ 1170 (h) (1, 2)] Sentence County Jail

_1. In the matter of People v. _____.

_2. Will counsel please state their appearances for the record? _;

_3. STATE PLEA & CONDITIONS--THEN DEFT'S TRUE NAME/DOB: (a). Is your true name? (b). Is your date of birth?

_4. MR/MS You've heard the proposed resolution stated by the attys in this matter, is that your understanding? [AND] do you agree to it?

_5. Have you had enough time to speak with your attorney about the nature of these charges and possible defenses to them?

_6. Are you under the influence of any drugs, alcohol or medication which would impair your ability to understand what is happening?

_7. Are you pleading freely & voluntarily? Is anyone forcing you to do this? Have any other promises been made to you other than what has been stated in open court? [Are you pleading for yourself and not for some other person/Co-Deft?]

CONSEQUENCES:

_8. Do you understand that the MAXIMUM possible sentence is _____ and the mandatory MINIMUM is _____ [DUI=\$390; 48 Hrs, 1st offender, Rest.dl] [§11550=90 days] [§14607.8 Veh. subj to forf.]

_9. PUNISHMENT:

By virtue of the proposed resolution of **PROBATION**, you could receive up to 5 years (or more § 1203.1) on Probation AND as a condition of Probation could be sentenced up to 1 year in the County Jail [or if agreed Min/Max County Jail]. If later, while on Probation you suffer a violation of Probation, then, after a court hearing, you could then be sent to County Jail for up to that Maximum term and/or be released on Mandatory Supervision within that maximum. **(Straight Time or Blended Sent= ST or BS))**

By virtue of the proposed resolution, you will serve ___ **YEARS IN THE COUNTY JAIL**. After you have served that term, if not the maximum, you will be released on Mandatory Supervision. If while on such supervision, you suffer a violation, then you can be returned to County Jail for up to that Maximum term and/or be released on further supervision within that maximum **(ST or BS)**

_DO YOU UNDERSTAND ALL OF THAT?

- _10. There is a MANDATORY RESTITUTION FINE of not less than \$200 or more than \$10 K. RESTITUTION is required by law. Also the court could impose fines of up to \$10K (\$20K=§11350-61) + Pnlty & Assessments. There is both a probation and a parole revocation restitution fine of not < than \$200 or >\$10K.[post 8/95] You will be reqrd to fill out a stmt of ASSETS. There is a mandatory \$40 Court Security Fee and \$30 Convictn assmt for each count.
- _11a There is a mandatory Drug Lab testing fee of \$50 @ Drug Count.
- _11b There is a mandatory Drug Program fee of up to \$150 @ Drug Cnt
- _11c You must secure Education/Treatment per H&S §11373 (If Prob)
- _11d If VEH INVOLVED IN/INCIDENTAL to H&S§§ 11350--11361 REVOCATION to 3 yrs. 1 YEAR REVOCATION B/C a motor veh. used in course of felony
- _11e You will be inelg for AFDC & non-health County benefits [Drugs][Wlfr Fraud]

- _12. There is a Minimum \$1000 Fine or C/S for the 1st Offense; \$2000 or C/S for the second/subsequent offense [Post 1992=§11350]

- _13a There is a requirement that you REGISTER as a [SEX, ARSON (life) GANG NARCO, (5 years from trigger events)] Offender. You will be required to undergo a SARATSO evaluation [§290.4 reg.]; §288.1 Psych Eval.; [You will be required to participate in [pre 7-1-12] successfully complete [Post 7-1-12] an approved Sex Offender Program for not less than 1 yr (§1203.067); waive your privilege vs self-incrimination and participate in a polygraph examinations; waive any psychotherapist-patient privilege to enable communication between the sex offender management professional and supervising prob. officer per P.C.§ 290.09] (§ 261,262, 264.1, 286, 288a, **288**, 288.5, 289)
- _13b You must obtain an HIV Test [SEX] There is a max of \$70 Aids Education Fine and aids counseling.[SEX, §11350, 11377, 11550]
- _13c You will be required to submit a buccal, blood, saliva & print Sample (§296)
- _13d There is a mandatory \$300 fine for the 1st Offense; \$500 fine for any subsequent offense [Any §290, (§290.3)]
- _13e There is a mandatory \$10 fine (=§§211,215,459,470,484,487,488,594)
- _14. As a convicted Felon, you may never use, own or possess or have under your care or custody any firearm or ammunition.

- _15 If you are not a CITIZEN of the United States, this conviction could result in your being DEPORTED, EXCLUDED FROM ADMISSION TO THE U.S. OR DENIED NATURALIZATION AS A CITIZEN of U.S. (§1016.5)

- _16. If you are currently on PROBATION OR PAROLE, this conviction will result in a Probation or Parole violation.

_17. As a result of the allegation (e.g.) regarding USE OF A DEADLY WEAPON you are presumptively ineligible for probation (§1203e).

_17A. As a result of your admission(s) to the STRIKE PRIOR(S) you are not eligible for probation and must be sentenced to State Prison;

Your term must be [doubled] [for life with a minimum term of 25 yrs.]

_18. Another Judge will sentence you in this matter. Also, if for some reason, the Judge does not agree with this proposed resolution you will be allowed to withdraw your plea(s) and have the matter returned to this Court to start all over.

_19. DO YOU UNDERSTAND AND ACCEPT ALL THESE CONSEQUENCES I HAVE MENTIONED TO YOU?

_20. You have the Right to a PRELIMINARY EXAMINATION. Do you know what a preliminary examination is? (If yes, go on to 21) At a PX, the Prosecutor must show REASONABLE CAUSE to believe that a Crime was committed by you. At that hearing you have the right to CONFRONT & CROSS-EXAMINE witnesses, Subpoena witnesses to present a defense on your behalf, the Privilege against Self-Incrimination as well as the right to Testify.

_21. Do you UNDERSTAND AND GIVE UP your right to a Preliminary Examination? Counsel(s) join? People Join?

_22. After a preliminary examination, if you were held to answer, charges would be filed against you in another dept of the Superior Court.

_NOW I AM GOING TO ADVISE YOU OF YOUR CONST. RIGHTS. THESE APPLY TO ALL THE ALLEGATIONS & THE UPPER TERM.

_22 (a) **You** have a **RIGHT TO A JURY TRIAL**, or if the prosecutor agrees, to a **COURT TRIAL**.

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_23. **You** have the **RIGHT TO CONFRONT & CROSS-EXAMINE WITNESSES**

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_24. **You** have the **PRIVILEGE AGAINST SELF-INCRIMINATION**, which is sometimes known as the **RIGHT TO REMAIN SILENT**. You also have the **RIGHT TO TESTIFY**, if you wish.

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_25. **You** have the RIGHT TO **SUBPOENA** witnesses to come to Court to present a defense, as well as the RIGHT to a **SPEEDY AND PUBLIC TRIAL**.
_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

TAKING THE PLEA

26. AS TO CASE NO. _____ in count __ charging you that on or about _____ etc
Do you ADMIT the ENHANCEMENT CLAUSE THAT (You personally used a

firearm, etc.): __THE DECLARATORY LANGUAGE THAT THIS IS A SERIOUS
FELONY PER §§ 667 AND 1192.7?

_____ As to COUNT _etc.

Do you ADMIT the ENHANCEMENT etc.

Do you ADMIT (That on Date...PRIOR? PROBATION INELIGIBILITY?

PRESUMPTIVE PROBATION INELIGIBILITY etc ?

_27. Do you understand that a NO CONTEST plea will be treated the same as a
GUILTY PLEA for the Court's Purpose? [OR]

_28. Are you pleading GUILTY because you are in fact guilty?

_29. Do(es) COUNSEL CONCUR in the Plea and Waivers? Any questions by
either counsel to ___(Deft's Name)?

_30. DO COUNSEL STIPULATE TO A FACTUAL BASES FOR THE PLEA(S)
Based upon the Reports contained in the Court File and the incorporated
complaint ? [Essential for a no contest plea] Thank you.

COURT FINDINGS:

_31. I find that the plea and waivers are made knowingly, intelligently and
voluntarily. There is/are [a] factual bases for the pleas based upon the
stipulation of counsel, [the admission of _ (Deft's Name)] and the reports
contained in the court file.

_32. IS TIME WAIVED for sentencing?

_33. THIS MATTER is referred to the PROBATION DEPARTMENT for a full
Presentence Report. {On a Waive Referral: for computation of credits and
victim notification} [(If Deft out of custody) You are ORDERED to go there
within 3 business days] AND you are ORDERED to appear in
DEPT_on__(DATE) at _(TIME). Do you understand?

_34. BAIL remains as previously set. COUNT(S)/PRIORS Will be taken UNDER
SUBMISSION to be Stricken/Dismissed at the time of Sentencing. Good
luck M(r)(s)___.

FELONY PLEA WAIVER
[Prison Eligible §1170(h) (3)]
[Parole Eligible=1 of 5 §3451(b)]
[Community Supervision: not §3451(b)]

- _1. In the matter of People v. _____.
- _2. Will counsel please state their appearances for the record? _;
- _3. STATE PLEA & CONDITIONS--THEN DEFT'S TRUE NAME/DOB: (a). Is your true name? (b). Is your date of birth?
- _4. MR/MS You've heard the proposed resolution stated by the attys in this matter, is that your understanding? [AND] do you agree to it?
- _5. Have you had enough time to speak with your attorney about the nature of these charges and possible defenses to them?
- _6. Are you under the influence of any drugs, alcohol or medication which would impair your ability to understand what is happening?
- _7. Are you pleading freely & voluntarily? Is anyone forcing you to do this? Have any other promises been made to you other than what has been stated in open court? [Are you pleading for yourself and not for some other person/Co-Deft?]

CONSEQUENCES:

- _8. Do you understand that the MAXIMUM possible sentence is _____ and the mandatory MINIMUM is _____ [DUI=\$390; 48 Hrs, 1st offender, Rest.d] [§11550=90 days] [§14607.8 Veh. subj to forf.]

_9. **PUNISHMENT:**

a. __ PROBATION

By virtue of the proposed resolution of **CONDITIONAL NO STATE PRISON**, you could receive up to 5 years (or more § 1203.1) on Probation AND as a condition of Probation be sentenced up to 1 year in the County Jail [or if agreed Min/Max County Jail]. If later, while on Probation, you suffer a violation of Probation, then, after a court hearing, you could be sent to State Prison for up to that Maximum term. If that were to occur and after you served your term in Prison you would be placed on Parole for the period provided by PC § 3000 etc., You cannot be retained under Parole or in custody for a period longer than **4, 7, 15 years, or Life. [(until 7-1-2013)]**; If you later suffer a violation of Parole, then after a hearing,

you could be sent back to State Prison for up to 1 year and Parole may be extended within that maximum or Community Supervision for no more than 3 years.

OR

b. __By virtue of the proposed resolution of _____ Years in Prison, You will serve _____ years in prison. [1 or 2]

[Prison and Parole OR Prison and Community Supervision]

[1. __PRISON and Parole; [Excluded § 3451(b)]] After you have served your Prison Term, you would be placed on Parole for the period provided by PC § 3000 etc. You cannot be retained under Parole or in custody for a period longer than 4, 7, 15 yrs or life. [(until 7-1-2013), then Community Supervision § 3000.8)]

or

[2. __PRISON and Community Supervision [NOT excluded § 3451(b)]] After you have served your Prison Term you will be released on Community Supervision (CS) for the period provided by PC § 3451 etc., generally, up to 3 yrs.

_DO YOU UNDERSTAND ALL OF THAT?

_10. There is a MANDATORY RESTITUTION FINE of not less than \$200 or more than \$10 K. RESTITUTION is required by law. Also the court could impose fines of up to \$10K (\$20K=§11350-61) + Pnlty & Assessments. There is both a probation and a parole revocation restitution fine of not < than \$200 or >\$10K.[post 8/95] You will be reqrd to fill out a stmt of ASSETS. There is a mandatory \$40 Court Security Fee and \$30 Convictn assmt for each count.

_11a There is a mandatory Drug Lab testing fee of \$50 @ Drug Count. (ATP)

_11b There is a mandatory Drug Program fee of up to \$150 @ Drug Cnt (ATP)

_11c You must secure Education/Treatment per H&S §11373 (If Prob)

_11d If VEH INVOLVED IN/INCIDENTAL to H&S§§ 11350--11361 REVOCATION to 3 yrs. 1 YEAR REVOCATION B/C a motor veh. used in course of felony

_11e You will be inelg for AFDC & non-health County benefits [Drugs][Wlfr Fraud]

_12. There is a Minimum \$1000 Fine or C/S for the 1st Offense; \$2000 or C/S for the second/subsequent offense [Post 1992=§11350 et. Seq.]

_13a There is a requirement that you REGISTER as a [SEX, ARSON (life) GANG NARCO, (5 years from trigger events)] Offender. You will be required to undergo a SARATSO evaluation [§290.4] **If SEX Probation:** § 288.1 Psych Eval.; You will be required to: participate in **[Pre 7-1-12]** successfully complete **[Post 7-1-12]** an approved Sex Offender Program for not less than 1 yr (§1203.067); **[Post 7-1-12=]**waive your privilege vs self-incrimination privilege and participate in a polygraph examinations; waive

any psychotherapist-patient to enable communication between the sex offender management professional and supervising prob. officer per P.C.§ 290.09] (§ 261,262, 264.1, 286, 288a, **288**, 288.5, 289) See §1203.067

_13b You must obtain an HIV Test [SEX] There is a max of \$70 Aids Education Fine and aids counseling.[SEX, §11350, 11377, 11550]

_13c You will be required to submit a buccal, blood, saliva & print sample (§296)

_13d There is a mandatory \$300 fine for the 1st Offense; \$500 fine for any subsequent offense [Any §290, (§290.3)] (ATP)

_13e There is a mandatory \$10 fine (=§§211,215,459,470,484,487,488,594) (ATP)

_14. As a convicted Felon, you may never use, own or possess or have under your care or custody any firearm or ammunition.

_15 If you are not a CITIZEN of the United States, this conviction could result in your being DEPORTED, EXCLUDED FROM ADMISSION TO THE U.S. OR DENIED NATURALIZATION AS A CITIZEN of U.S.

_16. If you are currently on PROBATION OR PAROLE, this conviction will result in a Probation or Parole violation.

_17. As a result of the allegation (e.g.) regarding USE OF A DEADLY WEAPON you are presumptively ineligible for probation (§1203e).

_17A. As a result of your admission(s) to the STRIKE PRIOR(S) you are not eligible for probation and must be sentenced to State Prison; Your term must be [doubled] [for life with a minimum term of 25 yrs.]

_18. Another Judge will sentence you in this matter. Also, if for some reason, the Judge does not agree with this proposed resolution you will be allowed to withdraw your plea(s) and have the matter returned to this Court to start all over.

_19. DO YOU UNDERSTAND AND ACCEPT ALL THESE CONSEQUENCES I HAVE MENTIONED TO YOU?

_20. You have the Right to a PRELIMINARY EXAMINATION. Do you know what a preliminary examination is? (If yes, go on to 21) At a PX, the Prosecutor must show REASONABLE CAUSE to believe that a Crime was committed by you. At that hearing you have the right to CONFRONT & CROSS-EXAMINE witnesses, Subpoena witnesses to present a defense on your behalf, the Privilege against Self-Incrimination as well as the right to Testify.

_21. Do you UNDERSTAND AND GIVE UP your right to a Preliminary Examination? Counsel(s) join? People Join?

_22. After a preliminary examination, if you were held to answer, charges would be filed against you in another dept of the Superior Court.

_ NOW I AM GOING TO ADVISE YOU OF YOUR CONST. RIGHTS. THESE APPLY TO ALL THE ALLEGATIONS & THE UPPER TERM.

_22 (a) **You** have a **RIGHT TO A JURY TRIAL**, or if the prosecutor agrees, to a **COURT TRIAL**.

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_23. **You** have the **RIGHT TO CONFRONT & CROSS-EXAMINE WITNESSES**

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_24. **You** have the **PRIVILEGE AGAINST SELF-INCRIMINATION**, which is sometimes known as the **RIGHT TO REMAIN SILENT**. You also have the **RIGHT TO TESTIFY**, if you wish.

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

_25. **You** have the **RIGHT TO SUBPOENA** witnesses to come to Court to present a defense, as well as the **RIGHT to a SPEEDY AND PUBLIC TRIAL**.

_DO YOU UNDERSTAND AND GIVE UP THESE RIGHTS?

TAKING THE PLEA

26. AS TO CASE NO. _____ in count ___ charging you that on or about _____ etc

Do you ADMIT the ENHANCEMENT CLAUSE THAT (You personally used a firearm, etc.): THE DECLARATORY LANGUAGE THAT THIS IS A SERIOUS FELONY PER §§ 667 AND 1192.7?

_____ As to COUNT _etc.

Do you ADMIT the ENHANCEMENT etc.

Do you ADMIT (That on Date...PRIOR? PROBATION INELIGIBILITY? PRESUMPTIVE PROBATION INELIGIBILITY etc ?

_27. Do you understand that a NO CONTEST plea will be treated the same as a GUILTY PLEA for the Court's Purpose? OR

_28. Are you pleading GUILTY because you are in fact guilty?

_29. Do(es) COUNSEL CONCUR in the Plea and Waivers? Any questions by either counsel to ___(Deft's Name)?

_30. DO COUNSEL STIPULATE TO A FACTUAL BASES FOR THE PLEA(S)
Based upon the Reports contained in the Court File and the incorporated
complaint ? [Essential for a no contest plea] Thank you.

COURT FINDINGS:

_31. I find that the plea and waivers are made knowingly, intelligently and
voluntarily. There is/are [a] factual bases for the pleas based upon the
stipulation of counsel, [the admission of _ (Deft's Name)] and the reports
contained in the court file.

_32. IS TIME WAIVED for sentencing?

_33. THIS MATTER is referred to the PROBATION DEPARTMENT for a full
Presentence Report. {On a Waive Referral: for computation of credits and
victim notification} [(If Deft out of custody) You are ORDERED to go there
within 3 business days] AND you are ORDERED to appear in
DEPT_on__(DATE) at _(TIME). Do you understand?

_34. BAIL remains as previously set. COUNT(S)/PRIORS Will be taken UNDER
SUBMISSION to be Stricken/Dismissed at the time of Sentencing. Good
luck M(r)(s) _.

Good until 7-1-13 re parole supervision for n³we Heinz
[Then community supervision with exceptions] *rev 10-04--11 gil brown*

Is a person sentenced entitled to pre-sentence credits for “home detention”?
Probably Not.

P.C. § 1203.016 authorizes a low risk or minimum security offender committed to a county jail to participate in a home detention program if approved by the county or the court. (§ 1203.016, subs. (a), (d).)

P.C. § 1203.018, a new statute, provides circumstances under which inmates being held in lieu of bail can be released to a program involving electronic monitoring (emp). Under (g) (2) “The correctional administrator...shall have discretionary authority...to permit program participation *as an alternative to physical custody.*” (my emphasis). Also, under (i) Willful failure of the program participant to return to the place of home detention prior to the expiration of any period of time authorized to be away or unauthorized departures is punishable pursuant to section 4532.

P.C. §2900.5(a) no longer contains “home detention” in its description of potential credits. It was enacted 1991 and sunsetted out in 1999 with the enactment of a new version of §2900.5(a).

In *People vs. Lapaille*, (1993) 15 CA 4th 1159, the court held that inasmuch as a person in “home detention” is entitled to get credits under §2900.5, defendant Lapaille should also get credits because he was ordered to be on “house arrest” as a condition of his OR. The *Lapaille* court also held that the phrase “home detention program in § 2900.5 refers only to electronic home detention under § 1203.016. The case was decided on the basis of equal protection because the court found that defendant was on the equivalent of “home detention.”

In *People vs. Pottoroff*, (1996) 47 CA 4th 1709, defendant was on a property bond and further ordered by the court to have regular contact with the OR project, to reside at a specific location, he was limited to home, employment or places related to the preparation of his case. Defendant asked for credits citing *Lapaille*. The court held defendant was NOT entitled to credits. §2900.5 provided for credits for home detention. The court held that defendant Pottoroff was not similarly situated with those in home detention under § 1203.016. In its analysis, it contrasted the rigors required by home detention under § 1203.016 including the possibility of penal consequences with Pottoroff’s restrictions and found them wanting.

In *People vs. Anaya*, (2007) 158 CA 4th 608 defendant was released on bail pending her trial. Conditions of her release included electronic monitoring and some restriction on her freedom of movement. She was required to sign a "Ventura County Probation Agency Community Confinement Release Contract." In giving Anaya custody credits for the time she spent wearing an electronic home monitoring device, the trial court relied on Penal Code §1203.016. That statute does not authorize a court to award presentence custody credits. It is not addressed to bail and, by its terms, has no application to the issue here. The statute authorizing the award of custody credits is section 2900.5. The court awarded her credits. The list of facilities for which presentence credit may be awarded in § 2900.5, subdivision (a) is preceded by the language "including, but not limited to". Anaya's argument that this language indicates the list is nonexclusive is correct. Anaya's contention that she is entitled to credits is not well taken for two reasons. **First**, her argument does not take into account the fact that the Legislature amended the statute to delete "home detention programs" from § 2900.5, subdivision (a). In construing the statute, a court cannot ignore this change. **Second**, the phrase "including, but not limited to," referred only to those facilities preceding "or home detention programs." At the time Anaya was in the home detention program, § 2900.5, subdivision (a) did not authorize the award of presentence custody credits. For this reason, Anaya's argument that her home detention program was as, if not more, restrictive than other types of custody for which credits have been awarded also is without merit.

Subdivision (f) of section 2900.5 states: "If a defendant serves time in a...*home detention program* in lieu of imprisonment in a county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail." (Italics added.) However, § (f) of section 2900.5 relates only to time served by a defendant as part of a sentence, not time while awaiting trial. The subdivision is not triggered unless a defendant both serves time **and** is sentenced under a statute requiring mandatory minimum jail time. Once the subdivision applies, it provides only that the time served qualifies as mandatory jail time, not any other time.

The legislature knows how to give credit for home detention programs. See P.C. § 1203.017 (a) involuntary home detention for misdemeanors. The statute specifically states a defendant on such a program gets one day of credit for incarceration for one day of participation **AND** also receive any sentence reduction credits they would have received if serving in the county jail.

Parole Revocations

Parolees who violate after September 30, 2011, will serve their revocation time in county jail instead of prison and can only be up to 180 days.

The responsibility of parole revocations for inmates released to county supervision shall be with the local courts. The responsibility of parole revocations for inmates released to the Division of Adult Operations' supervision will continue under the Board of Parole Hearings until July 1, 2013, at which time the entire parole revocation process shall be a local court-based process. On July 1, 2013, the local courts will become the sole parole authority. Contracting back to the state for offenders to complete a period of parole revocation is not an option. Only life term offenders who paroled pursuant to PC section 3000.1 can be returned to state prison.

After July, 1, 2013 The Board of Parole Hearings will continue to conduct:

- Parole consideration for lifers;
- Medical parole hearings;
- Mentally disordered offender cases; and
- Sexually Violent Predator cases.

Public Safety Realignment also provides the following under parole:

- Allows local parole revocations up to 180 days
- Authorizes flash incarceration at the local level for up to 10 days

Life term inmates parole pursuant to PC section 3000.1 (e.g., murderers, specific life term sex offenses) will be eligible for return back to state prison if parole is revoked for 30 days or more.

The Division of Juvenile Justice AB 109 limited the future juvenile court commitments to the Division of Juvenile Justice (DJJ). However, AB 117 removes this provision. As such, there will be no changes to DJJ during the 2011 realignment.

SEC. 47. Section 3451 of the Penal Code is amended to read:

3451. (a) Notwithstanding any other law and except for persons serving a prison term for any crime described in subdivision (b), all persons released from prison on and after October 1, 2011, or, whose sentence has been deemed served pursuant to Section 2900.5 after serving a prison term for a felony shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency designated by each county's board of supervisors which is consistent with evidence-based practices, including, but not limited to, supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under postrelease supervision.

(b) This section shall not apply to any person released from prison after having served a prison term for any of the following:

(1) A serious felony described in subdivision (c) of Section 1192.7.

(2) A violent felony described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(5) Any crime where the person is required, as a condition of parole, to undergo treatment by the State Department of Mental Health pursuant to Section 2962. (Mdo)

(c) (1) Postrelease supervision under this title shall be implemented by a county agency according to a postrelease strategy designated by each county's board of supervisors.

(2) The Department of Corrections and Rehabilitation shall inform every prisoner subject to the provisions of this title, upon release from state prison, of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that inmate. The department shall also inform persons serving a term of parole for a felony offense who are subject to this section of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that parolee. Thirty days prior to the release of any person subject to postrelease supervision by a county, the department shall notify the county of all information that would otherwise be required for parolees under subdivision (e) of Section 3003.

BILL NUMBER: ABX1 17 AMENDED
BILL TEXT

AMENDED IN SENATE SEPTEMBER 7, 2011
AMENDED IN SENATE SEPTEMBER 2, 2011

INTRODUCED BY Assembly Member Blumenfield


MAY 19, 2011

An act to amend Sections 26605 and 30025 of the Government Code, to amend Sections 11355 and 11382 of the Health and Safety Code, to amend Sections 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, and 12025 of, to add Sections 1233.15, 3460, 3465, 4019.2, and 4115.56 to, and to repeal and add Section 2932 of, the Penal Code, to amend Section 9 of Chapter 136 of the Statutes of 2011, and to amend Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), relating to criminal justice realignment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Blumenfield. Criminal Justice Realignment of 2011.

(1) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except for persons with a prior or current felony conviction for serious or violent felony, persons required to register as sex offenders, or persons convicted of a crime as part of a sentence enhancement, as specified, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county in a county jail for 16 months, or two or three years and a felony punishable by a term of imprisonment described in the underlying offense shall be punishable by imprisonment in a county jail. Those persons excepted from this requirement are subject to imprisonment in the state prison.

This bill would additionally require persons with a current or prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious or violent felony, as specified, ~~and persons with prior juvenile adjudication where the defendant was 16 years of age or older at the time of the commission of a serious or violent felony or a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony offense, as specified,~~ to serve the term of imprisonment in the state prison. 

(2) Existing law provides that certain specified felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or "gassing" a peace officer are punishable by incarceration in state prison. If Chapter 15 of the Statutes of 2011 becomes operative, certain of those felonies shall instead be punishable by incarceration in county jail.

This bill would make various technical and conforming changes to provisions related to the incarceration of persons for felony convictions in county jail. The bill would make certain felonies,

including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or "gassing" a peace officer punishable by incarceration in county jail pursuant to Chapter 15 of the Statutes of 2011 instead punishable by incarceration in state prison.

Burke
 § 12021 parts & felon
 § 12025 parts; gang (?)

(3) Existing law provides for the enhancement of prison terms for new offenses because of prior prison terms, as specified. If Chapter 15 of the Statutes of 2011 becomes operative, a judge, when imposing a sentence pursuant to these provisions, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

This bill would provide that a term imposed under the above-referenced provision, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of a specified enhancement, and make conforming changes.

(4) Existing law provides that, except as specified, every felony is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. If Chapter 15 of the Statutes of 2011 becomes operative, a felony punishable pursuant to specified provisions 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 2 or 3 years and where the term is specified for the term described in the underlying offense. Chapter 15 of the Statutes of 2011 requires that the punishment for certain felonies be served in state prison.

This bill would place specified parameters on the imposition of sentences under the provisions added by Chapter 15 of the Statutes of 2011. The bill would provide that when imposing a sentence pursuant to the ~~above-reference~~ above-referenced provisions, the court may commit the defendant for term served in custody, as specified, or for a term as determined in accordance with the applicable sentencing law but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer, as specified.

(5) Existing law provides that the moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011. Existing law requires that the moneys be allocated equally by the county or city and county to the district attorney's office and the county public defender's office.

This bill would require that where no public defender's office is established, the moneys be allocated to the county for distribution for the same purpose.

(6) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, applies certain provisions relating to the denial of time credits to persons confined in local facilities pursuant to provisions added by Chapter 15 of the Statutes of 2011 providing for the incarceration of felons in local facilities, as specified.

This bill would repeal the amendments made by Chapter 15 of the Statutes of 2011, restore prior law, and instead subject these felons to other credit provisions applicable to persons confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, as specified. The bill would provide that no credits may be earned for periods of flash incarceration, as specified. The bill would provide that any inmate sentenced to county jail assigned to a conservation camp who is eligible to earn one day of credit for every one day of incarceration shall instead earn

~~two~~ 2 days of credit for every one day of service and make related changes.

(7) Existing law provides that, except as specified, a prisoner sentenced to state prison under specified provisions, for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits are applicable to the prisoner.

This bill would delete the above-referenced provisions, thereby making other time credit provisions applicable to prisoners confined in or committed to specified local facilities applicable to the above-referenced prisoners.

(8) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except as specified, when specified persons who were not imprisoned for committing a violent felony, as defined, who have been released on parole from the state prison, and who have been on parole continuously for 6 months since release from confinement, within 30 days, shall be discharged from parole.

This bill would additionally make the above provision related to discharge from parole inapplicable to persons who were imprisoned for committing a serious felony or who are required to register as a sex offender, as specified.

(9) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, subjects certain persons released from state prison to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation, as specified.

This bill would provide that persons required to register as sex offenders and persons subject to life-time parole, as specified, who are released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to 3 years or the parole term the person was subject to at the time of the commission of the offense. The bill would make other conforming and related changes regarding the parole periods, revocations, search and seizure requirements, and the release of high-risk parolees.

(10) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, makes felons subject to postrelease supervision as established by the Postrelease Community Supervision Act of 2011 eligible to participate in reentry court programs, as specified, and would authorize counties to contract with the Department of Corrections and Rehabilitation in order to obtain day treatment and crisis care services for inmates with mental health problems who are released on postrelease community supervision.

This bill would instead authorize counties to contract with the department to obtain correctional clinical services. The bill would make changes to the postrelease community supervision agreement, require persons placed on postrelease supervision to be subject to search and seizure, and make other related changes regarding postrelease supervision sanctions, and revocations. The bill would require a supervising agency, upon determining that a person subject to postrelease supervision no longer permanently resides within its jurisdiction, where a change in residence was either approved or did not violate the terms and conditions of postrelease supervision, to transmit, within 2 weeks, the prison release packet to the designated supervising agency in the county in which the person permanently resides. By imposing additional duties on local agencies, the bill would create a state-mandated local program.

(11) Existing law provides that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correction facilities, as specified.

This bill would authorize, upon agreement with the sheriff or director of the county department of corrections, a board of supervisors to enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes. The bill would provide that when housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.

(12) Existing law provides that, except as specified, an inmate who is released on parole or postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law requires that specified information be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision. Existing law provides that, except as specified, the department shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) and, if Chapter 15 of the Statutes of 2011 becomes operative, requires county agencies supervising inmates released to postrelease supervision to provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison, as specified.

This bill would additionally require the Department of Corrections and Rehabilitation to submit, via electronic transfer, to the Department of Justice data to be included in the supervised released file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision.

(13) The Budget Act of 2011 reduced the amount appropriated, \$95,254,000, for support of the Department of Corrections and Rehabilitation by \$77,406,000 to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for instate housing of state inmates.

This bill would instead ~~reduced~~ reduce the amount appropriated by \$54,200,00 for those purposes.

(14) Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts to make certain calculations, including, among others, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison and the statewide probation failure rate.

This bill would additionally require, except for the Joint Legislative Budget Committee, the above-referenced entities to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 public safety realignment.

(15) This bill would include additional changes proposed by SB 9 and SB 576 contingent on the enactment of those bills.

(16) This bill would appropriate \$1,000 to the Department of Corrections and Rehabilitation for the purpose of state operations.

(17) The bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

(18) The California Constitution requires the state to reimburse

local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(19) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

BILL NUMBER: ABX1 17 ENROLLED
BILL TEXT

PASSED THE SENATE SEPTEMBER 7, 2011
PASSED THE ASSEMBLY SEPTEMBER 8, 2011
AMENDED IN SENATE SEPTEMBER 7, 2011
AMENDED IN SENATE SEPTEMBER 2, 2011

INTRODUCED BY Assembly Member Blumenfield

MAY 19, 2011

An act to amend Sections 26605 and 30025 of the Government Code, to amend Sections 11355 and 11382 of the Health and Safety Code, to amend Sections 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, and 12025 of, to add Sections 1233.15, 3460, 3465, 4019.2, and 4115.56 to, and to repeal and add Section 2932 of, the Penal Code, to amend Section 9 of Chapter 136 of the Statutes of 2011, and to amend Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), relating to criminal justice realignment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, Blumenfield. Criminal Justice Realignment of 2011.

(1) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except for persons with a prior or current felony conviction for serious or violent felony, persons required to register as sex offenders, or persons convicted of a crime as part of a sentence enhancement, as specified, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county in a county jail for 16 months, or 2 or 3 years and a felony punishable by a term of imprisonment described in the underlying offense shall be punishable by imprisonment in a county jail. Those persons excepted from this requirement are subject to imprisonment in the state prison.

This bill would additionally require persons with a current or prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious or violent felony, as specified, to serve the term of imprisonment in the state prison.

(2) Existing law provides that certain specified felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or "gassing" a peace officer are punishable by incarceration in state prison. If Chapter 15 of the Statutes of 2011 becomes operative, certain of those felonies shall instead be punishable by incarceration in county jail.

This bill would make various technical and conforming changes to provisions related to the incarceration of persons for felony convictions in county jail. The bill would make certain felonies,

including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or "gassing" a peace officer punishable by incarceration in county jail pursuant to Chapter 15 of the Statutes of 2011 instead punishable by incarceration in state prison.

(3) Existing law provides for the enhancement of prison terms for new offenses because of prior prison terms, as specified. If Chapter 15 of the Statutes of 2011 becomes operative, a judge, when imposing a sentence pursuant to these provisions, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

This bill would provide that a term imposed under the above-referenced provision, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of a specified enhancement, and make conforming changes.

(4) Existing law provides that, except as specified, every felony is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. If Chapter 15 of the Statutes of 2011 becomes operative, a felony punishable pursuant to specified provisions 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 2 or 3 years and where the term is specified for the term described in the underlying offense. Chapter 15 of the Statutes of 2011 requires that the punishment for certain felonies be served in state prison.

This bill would place specified parameters on the imposition of sentences under the provisions added by Chapter 15 of the Statutes of 2011. The bill would provide that when imposing a sentence pursuant to the above-referenced provisions, the court may commit the defendant for term served in custody, as specified, or for a term as determined in accordance with the applicable sentencing law but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer, as specified.

(5) Existing law provides that the moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011. Existing law requires that the moneys be allocated equally by the county or city and county to the district attorney's office and the county public defender's office.

This bill would require that where no public defender's office is established, the moneys be allocated to the county for distribution for the same purpose.

(6) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, applies certain provisions relating to the denial of time credits to persons confined in local facilities pursuant to provisions added by Chapter 15 of the Statutes of 2011 providing for the incarceration of felons in local facilities, as specified.

This bill would repeal the amendments made by Chapter 15 of the Statutes of 2011, restore prior law, and instead subject these felons to other credit provisions applicable to persons confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, as specified. The bill would provide

that no credits may be earned for periods of flash incarceration, as specified. The bill would provide that any inmate sentenced to county jail assigned to a conservation camp who is eligible to earn one day of credit for every one day of incarceration shall instead earn 2 days of credit for every one day of service and make related changes.

(7) Existing law provides that, except as specified, a prisoner sentenced to state prison under specified provisions, for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits are applicable to the prisoner.

This bill would delete the above-referenced provisions, thereby making other time credit provisions applicable to prisoners confined in or committed to specified local facilities applicable to the above-referenced prisoners.

(8) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except as specified, when specified persons who were not imprisoned for committing a violent felony, as defined, who have been released on parole from the state prison, and who have been on parole continuously for 6 months since release from confinement, within 30 days, shall be discharged from parole.

This bill would additionally make the above provision related to discharge from parole inapplicable to persons who were imprisoned for committing a serious felony or who are required to register as a sex offender, as specified.

(9) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, subjects certain persons released from state prison to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation, as specified.

This bill would provide that persons required to register as sex offenders and persons subject to life-time parole, as specified, who are released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to 3 years or the parole term the person was subject to at the time of the commission of the offense. The bill would make other conforming and related changes regarding the parole periods, revocations, search and seizure requirements, and the release of high-risk parolees.

(10) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, makes felons subject to postrelease supervision as established by the Postrelease Community Supervision Act of 2011 eligible to participate in reentry court programs, as specified, and would authorize counties to contract with the Department of Corrections and Rehabilitation in order to obtain day treatment and crisis care services for inmates with mental health problems who are released on postrelease community supervision.

This bill would instead authorize counties to contract with the department to obtain correctional clinical services. The bill would make changes to the postrelease community supervision agreement, require persons placed on postrelease supervision to be subject to search and seizure, and make other related changes regarding postrelease supervision sanctions, and revocations. The bill would require a supervising agency, upon determining that a person subject to postrelease supervision no longer permanently resides within its jurisdiction, where a change in residence was either approved or did not violate the terms and conditions of postrelease supervision, to

transmit, within 2 weeks, the prison release packet to the designated supervising agency in the county in which the person permanently resides. By imposing additional duties on local agencies, the bill would create a state-mandated local program.

(11) Existing law provides that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correction facilities, as specified.

This bill would authorize, upon agreement with the sheriff or director of the county department of corrections, a board of supervisors to enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes. The bill would provide that when housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.

(12) Existing law provides that, except as specified, an inmate who is released on parole or postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law requires that specified information be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision. Existing law provides that, except as specified, the department shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) and, if Chapter 15 of the Statutes of 2011 becomes operative, requires county agencies supervising inmates released to postrelease supervision to provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison, as specified.

This bill would additionally require the Department of Corrections and Rehabilitation to submit, via electronic transfer, to the Department of Justice data to be included in the supervised released file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision.

(13) The Budget Act of 2011 reduced the amount appropriated, \$95,254,000, for support of the Department of Corrections and Rehabilitation by \$77,406,000 to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for instate housing of state inmates.

This bill would instead reduce the amount appropriated by \$54,200,000 for those purposes.

(14) Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts to make certain calculations, including, among others, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison and the statewide probation failure rate.

This bill would additionally require, except for the Joint Legislative Budget Committee, the above-referenced entities to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 public safety realignment.

(15) This bill would include additional changes proposed by SB 9 and SB 576 contingent on the enactment of those bills.

(16) This bill would appropriate \$1,000 to the Department of Corrections and Rehabilitation for the purpose of state operations.

(17) The bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

(18) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(19) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Appropriation: yes.