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**FELONY SENTENCING AFTER
REALIGNMENT**

WHAT WE WILL COVER...

- ✘ New sentencing structure
- ✘ How to set up a “parole-like” status
- ✘ How to deal with “mixed counts”
- ✘ Issues related to exclusions
- ✘ Omissions from new structure
- ✘ Use of PC§ 17(b)
- ✘ Prison terms imposed under old law
- ✘ The role of evidence-based sentencing

BASIC STRUCTURE

- ✘ Seeks only to change place where sentence served
- ✘ No change in length of sentence
- ✘ No change in probation eligibility
- ✘ No change in structure of sentence under PC §§ 1170 and 1170.1
- ✘ No change in alternatives to jail

THREE GROUPS

- × Crimes sentenced to jail (PC § 1170(h))
 - + Where no punishment specified - 16 - 2 - 3
 - × Mostly "Wobblers"
 - + Where specified in county jail
 - × Not limited to 16 - 2 - 3
 - + See Appendix I
- × Crimes/ defendants excluded from jail
- × Crimes designated for prison

- × Exclusions
 - + Prior or current serious or violent felony conviction
 - + Required to register under PC § 290
 - + Sentenced for aggravated theft under PC § 186.11

- × Designated crimes
 - + See Appendix II
 - + Includes some strikes
 - + Includes crimes not strikes
 - + Court and counsel must verify proper place of commitment

NO PAROLE AFTER RELEASE

- ✘ Specific decision not to parole after 1170(h) commitment
- ✘ Limited alternatives under 1170(h)(5)
 - ✘ 1. Straight term
 - + From triad
 - + No supervision on release

- ✘ 2. "Split" or "blended" sentence
 - + Term from triad
 - + Suspend a concluding portion
 - ✘ Discretion of the court
 - + Supervised by probation
 - + Mandatory
 - + Supervision ends with original term imposed

HYP0 1- PC § 1170(H)

- ✘ 9/2/11 - commits PC § 459-2d [16-2-3], with prison prior (+1)
- ✘ 10/5/11 - sentenced to mid-term - has 100 days actual credit
- ✘ Sentence (mid-term):
 - + P.C. § 459-2d: 2 years
 - + P.C. § 667.5(b): 1 year
 - + Aggregate term: 3 years
 - + Credit of 100 actual + 50 conduct = 150 days

- ✘ Ct suspends concluding 300 days
- ✘ Orders def supervised by probation
- ✘ Net effect of sentence:
 - + Sentence of 3 years, less 150 days
 - + In custody up to 300 days remaining, less actual and conduct credits while in custody
 - + Supervised for remaining 300 days of original sentence (credit actual time only)
 - + No further supervision when complete

HYPO 2

- ✘ Def convicted of sale of .20 g cocaine base, plus prior drug conviction and vehicle theft
- ✘ Sentence:
 - +Ct 1 – H&S § 11352(a) [3-4-5]
 - +Ct 2 – VC § 10851 [16-2-3]
 - +Prior: H&S § 11370.2 [+3]
- ✘ Maximum?

- ✘ Maximum term:
 - +Ct 1 – H&S § 11352(a): 5 yrs
 - +Ct 2 – VC § 10851: 8 mos
 - +Prior: H&S § 11370.2: 3 yrs
 - +Aggregate term: 8 yrs, 8 mos
- ✘ What issues?

SENTENCING STRATEGY

- ✘ Maximum supervision
 - + Usually probation with ISS or ESS
 - + Reserves custody time for VOP
 - + ISS gives most flexibility
- ✘ Some supervision
 - + Use of § 1170(h)
 - + Limited custody available
 - + May be shorter period of supervision

- ✘ Least supervision
 - + Straight sentence
 - + Effect of jail cap?

EFFECTIVE DATE

- ✘ All persons sentenced on or after October 1, 2011
 - + No ex post facto – lesser punishment (?)
 - + Don't confuse with "credits" – effective for all crimes committed on or after October 1, 2011

MIXED PUNISHMENT

- × If principal or subordinate term requires prison
 - + ALL go to prison
 - + Presumably applicable to concurrent terms
 - + Presumably applicable based on enhancement

ISSUES RELATED TO EXCLUSIONS

- × PC § 290
 - + Applies to current crime
 - + Likely to past crime
- × "Plead and prove"
 - + Not likely – length of term not effected, only place
- × Use of PC § 1385
 - + May not be used

OTHER ISSUES

- × Application of PC § 1170(d) and (e)
 - + Recall of sentence
 - + Compassionate release
 - + Not mentioned – equal protection?
 - + Loss of jurisdiction?
- × Application of PC § 1170.1(c)
 - + Crimes in prison – full c/s term
 - + Crimes in jail ?

× Probation ineligibility statutes

- + No conflict
- + PC § 1170(h) commitments only happen after probation is denied
- + Post-release supervision under 1170(h)(5) is not “probation”

× PC § 17(b)

- + Likely no change in basic rules

× Execution of prior suspended sentence

- + Likely new law applies
- + Decision to execute a sentence is a sentencing proceeding – effective 10/1/11

× Def sentenced under old law

- + Effective date creates “savings clause”
- + Equal protection?

× Expansion of home detention

- + Currently limited to “minimum security inmates and low-risk offenders”
- + With B/S approval, can expand to ALL inmates
- + Can be involuntary

× Contract with CDCR

- + Any felon
- + Equal protection problem?

- × Custody credits
 - +4th version in 18 months
 - +All crimes committed on or after 10/1/11
 - +County jail (pre and post-sentence)
 - ×For every four days served, receive four days credit
 - ×Applicable to 1170(h)?

- + State prison (pre-sentence)
 - ×One day of credit for each day served
 - ×Persons excluded - For every four days served, receive four days credit

HOW DO WE DECIDE?

- × Who goes to jail
- × Who gets the treatment slots
- × Who gets supervision
- × What services are needed
- × What actually works

EVIDENCE-BASED PRACTICES

- ✘ Is EBP the only rational way through the maze?
- ✘ Risk/needs assessment
 - + Actuarially sound
 - + Decades of scientific research
 - + Identifies criminogenic needs
 - + Forms case plan
 - + Accounts for dynamic risk factors
 - + Defensible management tool

- + Helps avoid imposing unnecessary conditions
- + Allows informed selection of probation conditions
 - ✘ Instead of plea bargaining
- + It is one tool among several
