

# **FELONY SENTENCING AFTER REALIGNMENT**

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September 2011

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The Criminal Justice Realignment Act of 2011 makes significant changes to the sentencing and supervision of persons convicted of felony offenses. The new legislation amends a broad array of statutes concerning where a defendant will serve his or her sentence and how a defendant is to be supervised on parole. There are a number of issues related to this legislation, some of which will only be resolved by further changes by the Legislature or interpretation by the courts. The following is a discussion of some of the sentencing issues related to realignment *as the statutes currently exist* after the enactment of recent cleanup legislation.

In enacting the realignment legislation, the Legislature declared: “Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system. Realignment low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.” (P.C. § 17.5, subd. (a)(3)-(5).\*)

## **I. Felony commitments**

With respect to felony sentencing, it appears the intent of the realignment legislation merely is to change the place where sentences for certain crimes are to be served. The legislation has not changed the basic rules regarding probation eligibility. Courts retain the discretion to place people on probation, unless otherwise specifically prohibited, under the law that existed prior to the realignment legislation. It appears there is no intent to change the basic rules regarding the structure of a felony sentence contained in sections 1170 and 1170.1. Furthermore, there appears to be no change in the length of term or sentencing triad for any crime. Realignment comes into play when the court determines the defendant should not be granted probation, either at the initial sentencing or as a result of a probation violation.

For the purposes of sentencing, the realignment legislation divides felonies into three primary groups:

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\* Unless otherwise indicated, all references are to the Penal Code.

### ***A. Felonies sentenced to county jail***

Section 1170, subdivision (h), provides the following defendants must be sentenced to county jail if probation is denied:

- Crimes where a penal statute specifies the defendant “shall be punished by imprisonment pursuant to subdivision (h) of Section 1170” without the designation of a particular term of punishment. In such circumstances, the crime is punished by 16 months, two, or three years in county jail. (§§ 18 and 1170, subd. (h)(1).) Crimes in this category include most of the “wobblers,” where the crime may be punished either as a misdemeanor or a felony.

- Crimes where the statute now requires punishment in accordance with section 1170, subdivision (h), with a designated triad or term. The length of the term is not limited to 16 months, two, or three years, but will be whatever triad or punishment is specified by the statute. (§ 1170, subd. (h)(2).) It appears the longest possible single count term for a jail commitment is section 11419, possession of restricted biological agents, which provides for a term of 4, 8, or 12 years.

Please see Appendix I for a list of the crimes that are now sentenced under section 1170, subdivision (h).

### ***B. Felonies excluded from county jail***

Notwithstanding that a crime usually is punished by commitment to the county jail, the following crimes and/or defendants, if denied probation, must be sentenced to state prison: (§ 1170, subd. (h)(3).)

- Where the defendant has a prior or current serious felony conviction under section 1192.7, subdivision (c), a violent felony conviction under section 667.5, subdivision (c), or an out-of-state felony conviction of a crime that would qualify as a serious or violent felony under California law;

- Where the defendant is required to register as a sex offender under section 290; or

- Where the defendant is convicted of a felony and is sentenced with an enhancement for aggravated theft under section 186.11.

### ***C. Felonies specifying punishment in state prison***

The Legislature left over 70 specific crimes where the sentence must be served in state prison. It will be incumbent on courts and counsel to verify the correct punishment for all crimes sentenced after the effective date of the realignment legislation.

Please see Appendix II for a list of crimes still punished in state prison.

## **II. Alternatives to commitment to jail or prison**

Section 1170, subdivision (h)(4) specifically provides that “[n]othing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.”

## **III. Parole status following release from county jail commitment**

There is no formal state parole period following a defendant’s release from a commitment under section 1170, subdivision (h). Sections 3000, *et seq.*, governing the requirement of parole, only require parole if a defendant has been committed to state prison. These sections were not changed to include commitments under section 1170, subdivision (h); the omission was intentional.

Nothing in the realignment legislation, however, appears to restrict the application of county parole under sections 3074, *et seq.* County parole boards are charged with creating rules and procedures for the release on parole of “any prisoner who is confined in or committed to any county jail, work furlough facility, industrial farm, or industrial road camp, or in any city jail, work furlough facility, industrial farm or industrial road camp under a judgment of imprisonment or as a condition of probation for any criminal offense . . . .” (§ 3076, subd. (b).) The parole board is authorized to “release any prisoner on parole for a term not to exceed two years upon those conditions and under those rules and regulations as may seem fit and proper for his or her rehabilitation, and should the prisoner so paroled violate any of the conditions of his or her parole or any of the rules and regulations governing his or her parole, he or she shall, upon order of the parole commission, be returned to the jail from which he or she was paroled and be confined therein for the unserved portion of his or her sentence.” (§ 3081, subd. (b).) The statute further provides that for the purpose of computing the unserved portion of the person’s sentence, “no credit shall be granted for the time between his or her release from jail on parole and his or her return to jail because of the revocation of his or her parole.” (§ 3081, subd. (d).)

The use of county parole depends on an application from the inmate. Because of the potential two-year parole “tail,” it is unlikely an inmate will request parole status if the term imposed by the court is relatively short. Inmates committed for longer terms, however, may find county parole an appealing alternative to custody.

Although there appears to be no conflict in the statutory provisions governing commitments under section 1170, subdivision (h), and county parole, it is not clear whether the process is available when the court has imposed a structured mandatory supervision program under subsection (h)(5)(B). The question remains whether county parole boards can or should override the court’s well-structured plans.

#### **IV. Imposition of a “split” or “blended sentence (§ 1170, subd. (h)(5))**

The realignment legislation provides a limited alternative to parole by way of supervision by the probation department for a portion of the county jail term imposed by the court. Section 1170, subdivision (h)(5), provides:

“(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a full term in custody 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 in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.”

Sentences imposed under section 1170, subdivision (h)(5)(B), have been characterized as “split” or “blended” sentences because they have both custody and non-custody elements. The length and circumstances of the suspended term are within the court’s discretion; presumably the court could suspend all or only a portion of the sentence. There are a number of sentencing strategies available to the court, depending on the defendant’s circumstances, hopefully enlightened by a current risk/needs assessment done by the probation department:

- The court could impose a term from the triad, suspend a concluding portion of the term and set conditions of supervision. Such an alternative may be appropriate when the time in custody will be relatively short such that the case plan developed at sentencing will be reasonably current when the defendant converts to mandatory supervision.
- The court could impose a term from the triad, suspend a concluding portion of the term, but reserve jurisdiction to set the conditions of supervision shortly before the defendant is released from custody. Such an alternative may be appropriate when the court realizes that supervision is necessary, but because of a lengthy custody period may want to have a new risk/needs assessment at the time the defendant is ready to be released. Such a strategy will account for the changing nature of defendant’s risk and will make the case plan more relevant to defendant’s actual circumstances at the time he is ready for release.

- The court could choose to impose a sentence under the provisions of section 1170, subdivision (h)(5)(B), but reserve jurisdiction to set the actual time and conditions of release at a later time. Such a strategy might be appropriate where the court wants to give the defendant encouragement to complete various custody programs and do well in custody, then set relevant terms when the court determines release is appropriate.

In exercising these options, the court must observe three important points:

- Unless the court sets all of the timing and circumstances of release at the original sentencing proceeding, the court should expressly reserve jurisdiction to make these decisions at a later time.
- If the court does reserve jurisdiction to adjust the circumstances of release, such authority undoubtedly does not include the right to change the length of the original sentence. Once made, that is a sentencing decision that cannot be changed unless the court has the authority to recall the sentence under authority similar to section 1170, subdivision (d). (See discussion below.)
- Regardless of how the sentence is structured, once the original term runs out, including both custody and non-custody time and any appropriate custody credits, the defendant is free of any supervision.

The legislation specifies that the supervision period is mandatory. The court will have the discretion to impose either a straight commitment to jail for the computed term, or to impose a “split” sentence. Since the commitment under section 1170, subdivision (h), is the equivalent of a prison sentence, the defendant need not agree to the terms and conditions of supervision in the same manner as a sentence involving a grant of probation.

The terms, conditions and procedures of supervision will be similar to the traditional grant of probation. Presumably the probation officer and the district attorney will have the ability to petition the court for revocation of the post-sentence supervision. Presumably the court, after hearing, could reinstate the defendant under supervision or order into execution all or a portion of the remaining sentence. Presumably the defendant will have all of the due process rights of a probationer regarding notice, hearing and right to counsel. In any event, the supervision period will end with the expiration of the term originally imposed by the court.

The court is given the ability to terminate the supervision period prior to expiration of the imposed sentence. No specific guidance is given for the exercise of the court’s discretion in this regard, but presumably it would be similar to the discretion exercised regarding a request to terminate probation under section 1203.3, subdivision (a): “The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held.”

The court undoubtedly has the authority to set the terms and conditions of defendant's period of mandatory supervision. While the conditions likely will resemble traditional terms of probation, some care should be exercised in selecting terms and conditions that will impact treatment and workload of the probation officer. Terms and conditions should only be set following a proper risk/needs assessment. If the period of actual custody time is very short, the assessment prepared in connection with the original judgment and sentence may be sufficient. If it is anticipated the custody period will be lengthy, however, courts may well be advised to simply reserve jurisdiction to set the conditions of supervision shortly before the defendant's actual release date. In that way a current, relevant risk/needs assessment can be made so that a realistic and effective case plan can be developed.

It is likely that once the court places the defendant on mandatory supervision, the responsibility to supervise the defendant will remain in that county. Section 1203.9, as implemented by California Rule of Court, Rule 4.530, only relates to the transfer of probation supervision. The mandatory supervision allowed by section 1170, subdivision (h)(5)(B), is not probation.

#### **A. *Practical application***

The application of section 1170, subdivision (h)(5) may be illustrated by the following example:

The defendant is convicted on October 5, 2011, of a second degree burglary (16 – 2 – 3), committed on September 2, 2011, plus a prison prior under section 667.5, subdivision (b) (+1). The defendant has 100 days of actual custody credit. If the court chooses to deny probation and impose the middle base term for the burglary, the sentence under section 1170, subdivision (h)(5) would be:

Commitment to the county jail for the middle base term of 2 years, plus 1 year for the prison prior under section 667.5, subdivision (b), for an aggregate term of 3 years. Defendant would be granted custody credit of 100 days of actual time, plus 50 days of conduct credit, for total pre-sentence credit of 150 days [the custody credit provisions enacted by the realignment legislation apply only to *crimes committed* on or after October 1<sup>st</sup>].

The court now has two choices:

- A) The court could order the sentence served straight time, in which case the defendant will serve a 3-year term in county jail, less applicable actual time and conduct credits. At the end of the term, in this case a maximum of 18 months, the defendant will be released from custody with no supervision.
- B) The court could suspend a concluding portion of the term imposed, such as the concluding 300 days of the sentence (or any other number of days within the court's discretion), and place the defendant under the supervision of the

probation officer for that period. The net effect of such a sentence is that the defendant will do a county jail sentence of 3 years, less credit of 150 days for pre-sentence credit, less actual time and conduct credits for the remaining term up to the point where 300 days remain on the sentence; the actual time in custody will be 397 days. At that point he will be released for the remaining 300 days under mandatory supervision by the probation officer. At the end of the 300 days, the defendant will be free from all forms of supervision. The defendant will receive actual time day-for-day credit against the remaining 300 days as they are served. If there is a violation of the terms of supervision, the court would have the discretion to place the defendant back in custody for all or any remaining portion of the 300 days after deduction for any accrued day-for-day credits.

### ***B. Sentencing script***

Although the legislation does not require any particular language for the commitment of a person to county jail under section 1170, subdivision (h)(5)(B), the court might use language similar to the following:

*Probation is denied. The court has denied probation because of the increasing seriousness of the defendant's record. Accordingly, it is the judgment of the court that for violation of Penal Code section 459, burglary in the second degree, as charged in Count One, that the defendant be committed under the provisions of Penal Code section 1170(h)(5)(B) to the \_\_\_\_ County Jail for the middle term of two years. The court has selected the middle term because it finds the aggravating and mitigating factors are substantially in balance. Although the defendant took considerable property, he admitted wrong-doing at an early stage and he is quite young. The defendant having admitted that he suffered a prior prison term within the meaning of section 667.5(b), the court orders the defendant to serve an additional and consecutive term of one year, for an aggregate term of three years. The court hereby suspends the **concluding** 300 days of said term, during which time the defendant shall be supervised by the probation department. The conditions of supervision shall include . . . . [The court may choose to **reserve jurisdiction** to determine whether and under what conditions mandatory supervision will be imposed later in defendant's term.]*

### **V. Effective date of section 1170, subdivision (h)**

Section 1170, subdivision (h)(6), specifies the subdivision will be effective for all persons *sentenced* on or after October 1, 2011. This effective date should not be confused with the effective date of changes made to the custody credit rules under section 4019, which are applicable only to *crimes committed* on or after October 1, 2011. Although the changes to section 1170 will be applicable to crimes committed prior to their effective date, there likely will be no ex post facto concerns since the changes result in a potential

*reduction* of the penal consequences to many crimes, assuming a county jail sentence is considered less punitive than a prison sentence.

## **VI. Multiple counts, mixed punishment**

Section 1170.1, subdivision (a), provides in part: “Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in the county jail pursuant to subdivision (h) of Section 1170.”

Section 1170.1, subdivision (a), only makes reference to “principal or subordinate” terms, language only applicable to consecutive sentences. Technically these phrases have no application to concurrent terms. It is not clear whether this distinction is significant. It is unlikely the Legislature intended to give courts discretion when sentencing crimes concurrently to allow one crime to be served in state prison and the other in county jail. The purpose of the statutory language suggests that if one crime must be served in prison, they all must be served in prison, whether the sentences are being served concurrently or consecutively. The imposition of concurrent county jail terms to state prison commitments, however, is not unheard of. The practice is regularly used in the disposition of misdemeanor crimes being sentenced with felonies.

## **VII. Additional issues**

There are a number of residual issues regarding the scope and application of the realignment legislation. Some of these issues will require either further cleanup legislation or court interpretation.

### ***A. Application of the exclusion provisions***

As noted above, a defendant may not be sentenced to county jail under the realignment legislation if he has a prior or current California or out-of-state serious or violent felony conviction, is required to register as a sex offender under section 290, or is sentenced for a crime with an enhancement for aggravated theft under section 186.11. Because these exclusions are similar to the exclusions from the enhanced custody credit provisions of sections 2933 and 4019, a review of the custody credit case law may be instructive.

#### **(i) Sex crime registrants**

The exclusion clearly will apply to all defendants who are being sentenced on a *current* crime where registration is either mandatory or required as a matter of discretion under

section 290.006. Because the exclusion only applies if the defendant “is required to register as a sex offender,” the defendant would be entitled to be sentenced under section 1170, subdivision (h), if the court exercised its discretion *not to* require registration under section 290.006.

There is a question whether the exclusion will apply to persons who are required to register for a *prior* crime, and not because of the crime currently being sentenced. The plain language of the statute suggests that anyone required to register, whether or not for the current offense, will be excluded from sentencing under section 1170, subdivision (h). So, for example, a defendant sentenced for second degree burglary must be sentenced to state prison if he was previously convicted of a sex offense and is subject to the registration requirement. Given that the statutory wording is relatively clear and unambiguous, it seems likely that trial courts are required to follow its dictates. (*California Fed. Saving & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4<sup>th</sup> 342, 349.)

## **(ii) Defendants with current or prior serious or violent felony convictions**

Defendants who have a current or prior serious felony conviction under section 1192.7(c), a violent felony conviction under section 667.5, subdivision (c), or an out-of-state conviction that would qualify as a serious or violent felony conviction under California law, must be sentenced to state prison. Because the statute limits the exclusion to defendants who have current or prior serious or violent felony “convictions,” the restriction will not apply to defendants having only juvenile “adjudications” that will qualify as strikes under the Three Strikes law. (See *People v. Pacheco* (2011) 194 Cal.App.4<sup>th</sup> 343, 346.) Indeed, cleanup legislation originally included an exclusion based on California or out-of-state juvenile adjudications if the minor was 16 years old or older when the crime was committed. The language was deleted after further legislative hearings.

It is interesting to observe, however, that although a juvenile adjudication will not exclude a defendant from the possibility of sentencing under section 1170, subdivision (h), the sentence imposed by the court remains subject to the Three Strikes law. So, for example, a defendant with two juvenile strikes who commits a felony punishable under section 1170, subdivision (h), potentially is facing a sentence of 25 years to life in county jail! In such an unusual circumstance, however, the court and counsel undoubtedly will be considering available options under section 17, subdivision (b), and section 1385.

## **(iii) Whether disqualifying conditions must be pled and proved**

As noted above, a commitment to county jail under section 1170, subdivision (h), is unavailable to defendants who have current or prior violent or serious felony convictions listed in sections 667.5, subdivision (c), and 1192.7, subdivision (c), who are required to register as a sex offender, or who have a felony conviction with an enhancement for

aggravated theft under section 186.11. (§ 1170, subd. (h)(3).) As the legislation now reads, it is not clear whether the People must “plead and prove” the disqualifying factors.

One portion of section 1170 may suggest a duty to plead and prove any disqualifying factor. Section 1170, subdivision (f) provides: “Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any *allegation* that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.” (Emphasis added.) Whether the single reference to “allegation” under these circumstances is sufficient to imply a pleading and proof requirement is open to interpretation. It obviously is the purpose of this provision to prevent trial courts from dismissing disqualifying factors to allow a defendant to be committed to county jail. It is not likely the Legislature intended the statute to impose a pleading and proof requirement. When such a requirement is intended, the Legislature clearly knows how to express it. (See, e.g., § 1170.12, subdivision (a).)

There will be no issue if the defendant is actually charged with and found to have committed a prior serious or violent felony, is being sentenced for a current serious or violent felony, is being sentenced for a current crime that requires registration as a sex offender, or is currently being sentenced for an enhancement under section 186.11. The “pleading and proof” requirement, however, will be an issue in all other circumstances. *People v. Lara* (2011) 193 Cal.App.4<sup>th</sup> 1393, and *People v. Jones* (2010) 188 Cal.App.4<sup>th</sup> 165, holding there is a pleading and proof requirement to be excluded from the enhanced custody credit provisions, have been granted review or depublished by the Supreme Court. *People v. James* (2011) 196 Cal.App.4<sup>th</sup> 1102, and *People v. Voravongsa* (2011) 197 Cal.App.4<sup>th</sup> 657, conclude there is no requirement to plead and prove the existence of a prior disqualifying strike; both have been granted review.

A similar “pleading and proof” dispute arose regarding a defendant’s eligibility for Proposition 36. Except in limited circumstances, a defendant with a prior serious or violent felony conviction is not eligible for Proposition 36. (§ 1210.1, subd. (b)(1).) *In re Varnell* (2003) 30 Cal.4<sup>th</sup> 1132, 1143, concluded the prosecution is not required to plead and prove the disqualifying convictions. The court also concluded no such duty was compelled by *Apprendi v. New Jersey* (2000) 530 U.S. 466. (*Id.* at pp. 1141-1142.) Finally, it should be recalled that *Apprendi* and its progeny have only been applied in determining the maximum sentence a person is ordered to serve; they never have been applied to such things as the calculation of the minimum term of custody, and certainly not when the only issue is *where* the term is to be served. (See, e.g., where *Blakely v. Washington* (2004) 542 U.S. 296, 304-305, expressly distinguished its circumstances from those in *McMillan v. Pennsylvania* (1986) 477 U.S. 79, where the court imposed a statutory *minimum* if particular facts were found.)

While the appellate decisions regarding the pleading and proof requirement for a denial of enhanced custody credit may be helpful, there is a significant difference between that issue and the exclusion of a defendant from sentencing under section 1170, subdivision (h). As both *Jones* and *Lara* observe, the reduction of custody credit translates into a

direct increase in the amount of time the defendant serves in custody. The realignment legislation, however, does not change the *amount* of time to be served, only *where* it is to be served. Courts may be less willing to find a pleading and proof requirement under these circumstances, particularly in the absence of express legislation imposing such a duty.

**(iv) Use of section 1385 to dismiss disqualifying factors**

As noted above, subdivision (f) of section 1170 provides: “Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.” Clearly the Legislature intends that judges not be permitted to dismiss disqualifying factors to make a defendant eligible for a county jail commitment under section 1170, subdivision (h). Nothing in the legislation, however, suggests any intent to otherwise restrict the exercise of the court’s discretion under section 1385.

***B. Application of section 1170, subdivisions (d) and (e)***

Section 1170, subdivision (d), permits the court to recall a commitment to state prison within 120 days of the date of sentencing. Section 1170, subdivision (e), provides a process for the compassionate release of prisoners sentenced to prison. Neither of these statutory provisions mentions a commitment to county jail under section 1170, subdivision (h). Although commitments to county jail are not mentioned, it is likely such defendants have a viable claim to the benefits of these provisions as a matter of equal protection. It seems illogical to deny these procedures to the less serious offenders sent to county jail, but grant them to the more serious offenders sent to state prison.

This issue may be resolved as a matter of jurisdiction. Absent the exercise of discretion under section 1170, subdivision (d), the court loses jurisdiction to modify a state prison sentence once imposed and the defendant is received in state prison custody. (See *Portillo v. Superior Court* (1992) 10 Cal.App.4<sup>th</sup> 1829, 1835-1836.) It is unclear whether the superior court loses jurisdiction over a defendant confined in a county jail under section 1170, subdivision (h), particularly if the sentence is imposed under the provisions of subdivision (h)(5)(B), where the court has jurisdiction to remand the defendant into further custody if there is a violation of the conditions of mandatory supervision.

***C. Crimes committed in county jail***

Section 1170.1, subdivision (c), requires a full consecutive term for crimes committed in state prison, not simply a subordinate consecutive term limited to one-third the mid-base term. Commitments under section 1170, subdivision (h) are not mentioned. It is not clear whether the omission is intentional or inadvertent. As the statute now reads, if a

crime is committed while a defendant is committed under section 1170, subdivision (h), the court could only impose a traditional consecutive sentence, generally limited to one-third the mid-base term.

***D. Reconciliation of realignment legislation with probation ineligibility statutes***

A number of statutes prohibit the granting of probation for certain crimes or offenders. (See, e.g., §§ 1203.07, subd. (a), and 1203.073, subd. (b) [specified drug offenses].) Nothing in the realignment legislation is inconsistent with these statutes. A commitment under section 1170, subdivision (h), is the equivalent of a state prison commitment. It may only be ordered after probation is expressly denied by the court. The new sentencing provisions apply only when the court has determined not to grant probation, but to impose the statutory sentence. The amendment to section 667.5, subdivision (b), makes commitments under section 1170, subdivision (h), priorable as an enhancement, a consequence not applicable to traditional grants of probation. Supervision under a “split” or “blended” sentence under section 1170, subdivision (h)(5)(B), unlike probation, is mandatory; the defendant may not legally refuse the supervision. The fact that the sentence is served in county jail rather than state prison or allows post-release supervision by the probation officer does not mean the court is granting probation in violation of the statutes that prohibit such a disposition.

The original language of subdivision (h)(5) created an ambiguity because it specified the defendant was to serve “a period of mandatory *probation*.” The reference to “probation” has been eliminated.

The potential conflict between the statutes prohibiting probation and section 1170, subdivision (h)(5), if a conflict exists, is fairly limited. Defendants who would be ineligible for probation because of the Three Strikes law, use of guns, or specified sex crimes would be excluded in any event by the disqualifiers in section 1170, subdivision (h)(3). To the extent the realignment legislation may be in conflict with probation ineligibility statutes in other situations, the courts may imply an intent by the Legislature to establish an exception to probation ineligibility for cases coming within section 1170, subdivision (h).

***E. Exercise of discretion under section 17, subdivision (b)***

Since the realignment legislation changes only the place where a sentence is to be served, there will no change in the court’s ability to specify “wobbler” offenses as a misdemeanor under section 17, subdivision (b). The court will have the ability to specify an offense as a misdemeanor under all of the traditional circumstances. For example, subdivision (b) now provides: “When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county

jail, it is a misdemeanor for all purposes under the following circumstances: (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.” Accordingly, when a defendant is either sentenced to state prison or county jail under section 1170, subdivision (h), or the court suspends execution of a state prison sentence or a sentence under section 1170, subdivision (h), the court will have no jurisdiction later to specify an offense as a misdemeanor.

#### ***F. Execution of a prior suspended sentence***

It is common for courts to impose a state prison sentence, but suspend its execution pending satisfactory completion of probation. It is unclear what the court should do with these sentences if they are ordered into execution on or after October 1, 2011. The traditional rule specifies that once imposed, a suspended sentence may not later be modified. (*People v. Howard* (1997) 16 Cal.4<sup>th</sup> 1081, 1095.) The realignment legislation, however, applies to all persons *sentenced* on or after October 1, 2011. Certainly the decision not to reinstate a defendant on probation and order into execution a suspended state prison sentence is a sentencing proceeding. Furthermore, if the change from a state prison commitment to a county jail commitment is perceived as a less onerous sanction, a defendant may well be entitled to the benefits of the change as a matter of equal protection.

#### ***G. Status of defendants sentenced to state prison prior to October 1, 2011***

As noted above, the realignment legislation relative to sentencing under section 1170, subdivision (h), applies to all persons sentenced on or after October 1, 2011. The specification of the effective date constitutes a “savings clause” which prevents its application to sentencing proceedings prior to the designated date. (See *People v. Rossi* (1976) 18 Cal.3d 295.)

A timely application for recall of a sentence under section 1170, subdivision (d), may constitute a sentencing proceeding for the purpose of applying the new law to the case. Beyond that process, however, inmates sentenced under the old law only have a possible argument based on a denial of equal protection of the law. Such arguments have not been favorably received. (See, e.g., *In re Stinnette* (1979) 94 Cal.App.3d 800, 804-805.)

#### ***H. Crimes punishable by “state prison” or “pursuant to subdivision (h) of Section 1170”***

Under the law prior to realignment, it has been well understood that if a statute specifies a crime punishable in “state prison” without a designated triad, the sentence is 16 months,

2, or 3 years in prison. (§ 18.) Following realignment legislation, section 18, subdivision (a), now reads: “Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony is punishable by imprisonment for 16 months, or two or three years in the state prison unless the offense is punishable pursuant to subdivision (h) of section 1170.” Accordingly, if the statute simply specifies punishment in “state prison” without a designated triad, the crime is punishable by 16 months, or two or three years in state prison. If the statute simply specifies punishment “pursuant to subdivision (h) of Section 1170,” the crime is punishable by 16 months, or two or three years in county jail.

***I. Commitment under section 1170, subdivision (h)(5) as a “prior” under section 667.5, subdivision (b)***

Section 667.5, subdivision (b), has been amended to specify that commitments under section 1170, subdivision (h) qualify for the one-year enhancement for prior “prison” terms, whether the person is committed to state prison or county jail. Section 667.5, subdivision (b), expressly provides that a “split” or “blended” sentence imposed under section 1170, subdivision (h)(5)(B), qualifies as a chargeable prior conviction.

***J. Prior convictions in another jurisdiction (§ 668)***

Section 668 has been amended to specifically cross-reference commitments under section 1170, subdivision (h). Accordingly, prior convictions obtained in other jurisdictions may be used for commitments under section 1170, subdivision (h), as if the prior conviction had occurred in California.

***K. Restitution fines***

Imposition of restitution fines under sections 1202.4, subdivision (b), 1202.44 and 1202.45 in some respects are different after October 1, 2011.

***(i) Misdemeanors***

No change in the current law.

***(ii) Felonies when defendant placed on probation***

Where imposition of sentence has been suspended, there will be no change in the process. The court will impose the basic restitution fine of \$200 to \$10,000 under section 1202.4,

subdivision (b). The court will impose a probation revocation fine in the same dollar amount under section 1202.44.

If the court imposes a suspended *state prison* sentence, the court should impose the basic assessment under section 1202.4, subdivision (b), a probation revocation fine in the same dollar amount under section 1202.44, and a parole revocation fine in the same dollar amount under section 1202.45.

If the court imposes a suspended term under *section 1170, subdivision (h)*, whether or not a “split” sentence, the court should impose only the basic restitution fine under section 1202.4, subdivision (b) and the probation revocation fine under section 1202.44. The parole revocation assessment should not be imposed because there is no parole on a commitment under section 1170, subdivision (h).

**(iii) Felonies when defendant committed to state prison or under section 1170, subdivision (h)**

Where the court denies probation and sentences the defendant to *state prison*, the court should impose the basic restitution fine under section 1202.4, subdivision (b), and the parole revocation fine under section 1202.45. If the defendant had previously been on probation, the court should order into execution the probation revocation fine under section 1202.44.

Where the court denies probation and sentences the defendant to *county jail* under section 1170, subdivision (h), whether or not a “split” sentence, the court should only impose the basic restitution fine under section 1202.4, subdivision (b). The probation revocation fine under section 1202.44 should not be imposed because there is no probation. The parole revocation fine under section 1202.45 should not be imposed because there is no parole. If the defendant had *previously* been on probation, the court should order into execution the *previously imposed* probation revocation fine under section 1202.44.

***L. Expansion of home detention programs***

The realignment legislation amended section 1203.016, subdivision (a), to permit county boards of supervisors to expand the use of home detention programs. Previously these programs were limited to “minimum security inmates and low-risk offenders.” Now, with the approval of the board of supervisors, the program may be made available to all inmates confined in the county jail. The program, which can either be voluntary or imposed involuntarily, will be administered by the local “correctional administrator.” The new provision allowing involuntary placement on home detention is in addition to the involuntary placement under section 1203.017 which is triggered by jail overcrowding.

### ***M. Contracts with Department of Corrections and Rehabilitation***

Penal Code section 2057 permits counties to contract with CDCR for the housing of any felon. There is no restriction on the type of felon that could be transferred to CDCR under this arrangement. The statute is silent as to any of the specific terms of the contract, including such matters as cost and length of the commitment. Presumably the contract could relate to a single individual or group of persons. There has been a suggestion that such arrangements may violate the equal protection clause if an inmate is singled out for special housing.

Section 4115.56 allows the counties to contract with CDCR for housing of prison inmates in the county jail during the final 60 days of their term for the purpose of providing “reentry and community transition” services. Such a transfer places the inmates under the exclusive jurisdiction of the local county facilities.

### ***N. Cases from multiple jurisdictions***

The realignment legislation is wholly silent on the issue of sentences from multiple jurisdictions. So, for example, if a defendant is convicted of vehicle theft in County A, and later is convicted of second degree burglary in County B, how is the sentence to be structured and where is the custody time to be served? The cases would be handled in the traditional manner if both counties granted probation. The process is not at all clear if the two counties sentence the defendant under section 1170, subdivision (h). Since the rules regarding the structure of the sentence under section 1170.1 have not been changed, the second sentencing judge will have the jurisdiction to determine whether there will be a consecutive or concurrent sentencing structure. Beyond that, however, there is no existing rule or procedure to answer the following questions:

- Where is the sentence to be served if the second judge determines a consecutive sentence is appropriate? Is it the last county to sentence? Can the second judge impose the term, then remand the defendant to the first county to serve the first sentence?
- Where is the sentence to be served if the second judge determines a concurrent sentence is appropriate? Is the entire sentence served in the second county? Does custody follow the longest term?
- What if one county decides to contract with the Department of Corrections and Rehabilitation for the placement of defendant in state prison? Must the other county pay for any of the costs of custody?
- What if one county imposes a straight term in custody under section 1170, subdivision (h)(5)(A), but the other county imposes a “split” sentence under subdivision (h)(5)(B)?

There are no clear answers to any of these questions. Hopefully they will be addressed by the Legislature in further cleanup legislation.

***O. Commitments to the California Rehabilitation Center (Welf. & Inst. §§ 3050, et seq.)***

Nothing in the realignment legislation appears to limit the ability of the court to commit a defendant to the California Rehabilitation Center (C.R.C.) as a narcotics offender. Welfare and Institutions Code, section 3051 provides, in relevant part, “Upon conviction of a defendant for a felony, or following revocation of probation previously granted, and upon imposition of sentence, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant’s record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.” Nothing in section 3051 conditions the defendant’s qualification on a potential commitment to state prison. If after hearing the court determines the defendant is not qualified for commitment as a narcotics offender, section 3051 specifies the defendant is to be returned to court “for the ordering of execution of sentence.” Again, state prison is not mentioned. The only other instance where state prison is a potential factor in the sentence relates to a defendant’s ineligibility for commitment to C.R.C. Section 3052, subdivision (a)(2), excludes any defendant who has a sentence that “exceeds six years’ imprisonment in state prison.” Certainly a sentence to county jail under section 1170, subdivision (h), would not trigger the six-year state prison limit. At the very most, it may be implied that the sentence under section 1170, subdivision (h), must not be longer than six years.

Unless the defendant is otherwise excluded from C.R.C. because of a factor listed in section 3052 or because of excessive criminality, there appears no reason to deny a defendant a commitment as a narcotic addict for any crime which remains punishable in state prison. For the reasons indicated above, defendants convicted of crimes punishable under section 1170, subdivision (h), also appear to be eligible for such a commitment.

## **VIII. Change in calculation of conduct credits**

The 2011 Realignment Legislation also made changes to the method by which custody conduct credits are computed. Section 4019 has been amended to now provide that inmates confined in or committed to the county jail for four or more days are to receive two days of conduct credit for every four days served, or approximately one-half off their sentence. In other words, for every two days of actual time, four days of the sentence will be deemed served. The net effect of the change is that defendants will receive two days of extra credit for every two days actually served in custody. The provisions apply to all of the following persons:

- Persons serving a misdemeanor sentence
- Persons serving a term in jail imposed as a condition of probation in a felony case

- Persons receiving pre-sentence credit toward a sentence to state prison (unless limited by such provisions as section 2933.1), or county jail under section 1170, subdivision (h)
- Persons serving jail custody for violation of state parole or community supervised parole (but not for “flash” incarceration)
- Persons serving a commitment under section 1170, subdivision (h).

***A. Exclusions from enhanced credits eliminated***

The Legislature has eliminated the provisions in sections 2933 and 4019 that had limited credit awards for persons convicted of prior serious or violent felonies, persons committed for serious felonies, and persons required to register under section 290. Accordingly, unless otherwise limited, all pre-sentence credit is the same for all inmates. Once in prison, all defendants will receive conduct credit under section 2933 of six months for every six months actually served, unless otherwise limited by other statutes. The realignment legislation made no change to the application of section 2933.1, limiting pre and post-sentence credit for violent felonies to 15%, and section 2933.2, prohibiting any conduct credit for persons convicted of murder.

***B. No conduct credit for “flash” incarceration***

Defendants serving a period of “flash” incarceration pursuant to sections 3000.08 or 3454 are to receive no conduct credits under section 4019. (§ 4019, subd. (i).)

***C. Extra credit for conservation camps and firefighters***

Section 4019.2 has been added to grant extra credit to inmates sentenced to county jail but are assigned to conservation camps or as an inmate firefighter. The statute specifies that an inmate “eligible to earn one day of credit for every one day of incarceration pursuant to Section 4019 shall instead earn two days of credit for every one day served. . . .” It is clear the Legislature intends to reward inmates extra credit for extra service to the state. What is not clear, however, is the extent of the reward. Section 4019.2 makes reference to persons who are eligible under section 4019 to receive one day of credit for every *one* day served. Unfortunately, there is no such provision in section 4019; rather, it is one day of good conduct credit for *four* days served and one day of work credit for *four* days served. It seems the Legislature attempted to increase the credit by one day for each of the good time and work credits. Accordingly, absent further clarification from the Legislature or appellate court ruling, it is suggested section 4019.2 be interpreted to mean that for persons who meet the requirements of section 4019.2 who are confined in or committed to county jail for four or more days, for every two days spent in actual custody, six days will be deemed served.

***D. Effective date of changes in credits***

The amendments to the credit statutes made by the realignment legislation are to be applied prospectively only to *crimes committed* on or after October 1, 2011. (§ 4019, subd. (h).) Any days earned prior to October 1, 2011, are to “be calculated at the rate required by the prior law.” (*Id.*)

***E. Credits for persons who commit a crime prior to October 1, 2011, but are sentenced after that date***

As noted above, credits earned prior to October 1, 2011, are to be calculated using the applicable prior law. To determine the correct credit provision, the court should first determine the date the crime occurred (or the underlying crime for violations of probation). The court should then use the applicable credit formula for that time period. A summary of the relevant sentencing periods and applicable credit formulas are provided in the appendix to “Awarding Conduct Credits Under P.C. §§ 4019 and 2933 After October 1, 2011,” by Couzens and Bigelow.

The only sentence not covered by the law prior to October 1, 2011, is a commitment under section 1170, subdivision (h); the sentencing system did not exist prior to October 1, 2011. Pending further appellate review of the issue, it is suggested that the calculation of credits for commitments under section 1170, subdivision (h), for crimes committed prior to October 1, 2011, be the same as for a state prison commitment. Since the Legislature has merely changed the place where a sentence must be served, but preserved most of the characteristics of a state prison commitment for crimes sentenced under section 1170, subdivision (h), the most similar formula is the credit formula for state prison commitments.

***F. Resource for calculation of custody credits***

The changes made by the realignment legislation to custody credits must be viewed in context with all of the amendments to section 2933 and 4019. Please refer to the separate memorandum on custody credits: “Awarding Conduct Credits Under P.C. §§ 4019 and 2933 After October 1, 2011,” by Couzens and Bigelow.

**APPENDIX I: Table of Crimes Requiring Commitment to County Jail**

**PLEASE NOTE: The following table was prepared by Michael B. Silverman, Supervising Deputy District Attorney, County of Riverside. It is his best attempt to locate all crimes that now include “punishment pursuant to subdivision (h) of Section 1170 of the Penal Code.” 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.**

**Penal Code**

33	168	273.65(d),(e)
38	171c(a)(1)	273d
67.5(b)	171d	278
69	181	278.5
71	182	280(b)
72	186.10	284
72.5	186.28	288.2
76	191.5(c)(2)	290.4(c)(1)
95	193(b)	290.45(e)(1)
95.1	193.5(b)	290.46(j)(2)
96	210.5	311.9
99	217.1(a)	313.4
107	218.1	337.3
109	219.1	337.7
115.1	237(a)	337b
126	241.1	337c
136.7	241.4	337d
137(b)	241.7	337e
139	243(c),(d)	337f
140	243.1	350(a)(2),(b),(c)
142	243.6	367f
146a(b)	244.5	367g
146e(b)	245.6(d)	368(d),(e),(f)
148(b),(c),(d)	246.3(a)	374.2
148.1	247.5	374.8
148.3(b)	261.5(c),(d)	375(d)
148.4(b)	265	382.5
148.10	266b	382.6
149	266g	386
153(1), (2)	271	387
156	271a	399.5
157	273.6(d),(e)	404.6(c)

405b	560.4	2790
417.3	566	4011.7
417.6	570	4131.5
422.7	577	4502
453	578	4533
461(b)	580	4536
463	581	4550
464	587	4573
470a	587.1(b)	4573.6
470b	591	4573.9
473	593	4574(a),(b)
474	594(b)(1)	4600
478	594.3	11411(c),(d)
479	594.35	11413
480	594.4(a)	11419
481	597	12025(b)(1),(2),(5),(6)
483.5	597.5(a)	12035(d)(1)
484b	600(a), (c), (d)	12040
484i	601	12072(g)(2),(3),(4)
487b	610	12076
487d	617	12090
489(b)	620	12101
496	621	12220
496a	625b(b)	12280(a),(b)
496d	626.9(f),(h),(i)	12281
499c	626.95	12303.3
499d	626.10(a)(1), (b)	12303.6
500(b)(2)	629.84	12304
502(d)(1),(2)(B),(3)(C), (4)(B)	631	12312
506b	636	12320
520	637	12355
529	647.6(b),(c)	12370
529a	653f(a),(c),(d),(e)	12403.7
530.5(a),(c)(2),(3),(d)	653h	12422
532a(4)	653j	12520
532f	653s	18715
533	653t	18720
535	653u	18725
537e(a)(3)	653w(b)(1),(3)	18730
538.5	664(a)	18375(c)
548	666(a)	18740
549	666.5	20110
550(c)(1),(2)(A),(3)	836.6	22810
551(c),(d)	1320(b)	22910
560	1320.5	23900
	2772	25110(a)

25300	29700(a)	31360
25400(c)(5),(6)	30315	32625
25850(c)(6)	30600	33410
27590(b),(c),(d)	30605(a)	
28250(b)	30725	

**Business & Professions Code**

585  
650(g)  
654.1  
655.5(f)  
729(b)(3), (b)(4), (b)(5)  
1282.3(b)  
1701  
1960  
2052(a)  
2315(b)  
4324(a), (b)  
5536.5  
6126(b), (c)  
6153  
6788  
7028.16  
7739  
10238.6  
11020(b)  
11023  
11286 (b)  
11287  
11320  
16755(a)(2)  
17511.9(b)  
17550.19(b)  
22430(d)  
25618

**Civil Code**

892(a),(b)  
1695.8  
1812.125  
1812.217  
2945.7  
2985.2  
2985.3

**Corporations Code**

2255(c)  
2256  
6811  
6814  
8812  
8815  
12672  
12675  
22002(c)  
25540  
25541  
27202  
28880  
29102  
29550(a), (b)  
31410  
21411  
35301

**Education Code**

7054(c)

**Election Code**

18002  
18100  
18101  
18102  
18106  
18200  
18201  
18203  
18204  
18205  
18310  
18311

18400  
18403  
18502  
18520  
18521  
18522  
18523  
18524  
18540  
18544  
18545  
18560  
18561  
18564  
18566  
18567  
18568  
18573  
18575  
18578  
18611  
18613  
18614  
18620  
18621  
18640  
18660  
18661  
18680

**Finance Code**

3510  
3532  
5300  
5302  
5303  
5304  
5305  
5307  
10004  
12102  
14752  
17700  
18349.5  
18435

22753  
22780  
31880  
50500

**Fish & Game Code**

2004(b)  
2005(a)(2)

**Food & Agriculture**

17701  
18932  
18933  
19440  
19441  
80174

**Government Code**

1368  
1369  
3108  
3109  
5954  
6200  
6201  
8670.64(a), (c)  
9056  
27443  
51018.7(a)

**Harbors & Navigation Code**

264(b)  
310  
668(c)(1),(g)

**Health & Safety**

1390  
1522.01 (c)  
1621.5(a)  
7051  
7051.5

8113.5(b)(2),(b)(3)  
8785  
11100 (f)(2)  
11100.1(b)(2)  
11105  
11153(b)  
11153.5(b)  
11162.5(a)  
11350(a),(b)  
11351  
11351.5  
11352  
11353.5  
11353.6 (c)  
11353.7  
11355  
11357(a)  
11358  
11359  
11360 (a)  
11366.5 (a),(b),(c)  
11366.6  
11366.8 (a),(b)  
11370.6 (a)  
11371  
11371.1  
11374.5 (a)  
11377 (a)  
11378  
11378.5  
11379  
11379.5  
11379.6 (a),(c)  
11380.7 (a)  
11382  
11383 (a),(b),(c),(d)  
11383.5 (a) thru (f)  
11383.6 (a),(b),(c),(d)  
11383.7 (a) thru (f)  
12401  
12700 (a),(b)(3),(b)(4)  
17601(b)  
18124.5  
25180.7(c)  
25189.5 (b), (c), (d), (e)  
25189.6

25189.7(b), (c)  
25190  
25191(a)(2)  
25395.13(b)  
25515(a)  
25541  
42400.3(c)  
44209  
100895(b)  
109335  
115215(b), (c)  
116730(b)  
116750(a), (b)  
118340(c), (d)  
131130(b)

### **Insurance Code**

700(b)  
750(b)  
833  
1043  
1215.10(d), (e)  
1764.7  
1814  
1871.4(b)  
10192.165(e)  
11161  
11162  
11163  
11760(a)  
11880  
12660  
12845

### **Labor Code**

227  
6425(c)  
7771

### **Military & Veterans Code**

145  
1318  
1672(b)

1673

5532.5

55363

**Public Contract Code**

60637

10283

**Unemployment Insurance Code**

10873

2118.5

**Public Resources Code**

**Vehicle Code**

5097.99 (b), (c)

2478(b)

14591(b)(2)

2800.4

25205(g)

4463(a)

48680(b)(1)

10501(b)

**Public Utilities Code**

10752 (c)

7680

10801

7724

10802

7903

10803

21407.6(b)

10851

21464 (a)

21651 (c)

**Revenue & Taxation Code**

23104(b)

7093.6(n)

23105(a)

7093.6(j)

23109.1 (a)

9278(n)

23550(a)

9278(j)

42000

14251

**Water Code**

16910

13387

18631.7(d)(2)

19705

19708

30459.15

32471.5

32555

38800

40211.5

41171.5

43522.5

43606

45867.5

45955

46628

46705

50156.18

871.5 (a)

1001.5 (a)

1768.7 (b)

1768.85 (a)

3002

7326

8100(g)

8101 (a), (b)

8103(i)

10980(b),(c)(2), (d), (g),(h)(1)(A)-(C)

14107.2 (a)(2), (b)(2)

14107.3

**Welfare & Institutions Code**

14107.4 (b), (e)  
17410

## APPENDIX II: Table of Crimes Requiring Commitment to State Prison

**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.**

### Penal Code

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
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.

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
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### **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
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

**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.