



CALIFORNIA LEGISLATIVE UPDATE:

A Review of New Law and Unfinished Business

Though the California legislature's special session to address the state's prison crisis was ultimately unremarkable, several regular session assembly and senate bills addressing corrections and criminal justice made it to the Governor for his approval or rejection.

As of September 30, 2006, all legislation to be decided upon by the governor was completed. In total, 1171 bills crossed the Governor Schwarzenegger's desk. 910 bills were signed and 261 vetoed, for an overall veto average of 22%, down from his prior 24% veto-rate since taking office.

The criminal justice bills that were presented to the Governor were varied, but several focused on similar issues. No measures to improve California's statewide juvenile justice system were ultimately signed, with explanations that the remedial work ordered by the courts should be allowed to proceed without legislative interference.

The Governor vetoed several juvenile justice bills sponsored by Senator Gloria Romero, including efforts to reduce time-adds to juvenile commitments. In 2005, male youth in DJJ facilities were subject to average of 8.2 additional months as a result of time-adds. Time-adds are responsible for 23% of the time young men remain in DJJ facilities.¹

A measure to allow increased media access to state prisons and inmates was vetoed; however the Governor stated that he would order new CDCR regulations to improve media access to prisons.

Finally, despite strong support and need, the Governor vetoed a proposal that would have guaranteed immediate access to Medi-Cal benefits to those juvenile offenders returning from institutional confinement in a Division on Juvenile Justice facility. He also vetoed the Fair Chance Act, a bill to support re-entry of juvenile offenders with medical needs or disabilities. Under existing law, these benefits terminate upon an individual's incarceration. These bills would have required that the benefits are only suspended, thus ensuring that juveniles returning to the community after a period of incarceration

¹ Safety and Welfare Remedial Plan: Implementing Reform in California, July 10. 2006.

are not without medical care or benefits. Instead, the Governor signed Senate Bill 1469 to ensure access to medical care when a juvenile is released from a local detention facility. This bill fails to seek services to wards returning from incarceration in a DJJ facility.

Bills signed into law evidence an ongoing commitment to enhance sentences for sex offenders and impose more stringent penalties for possession of methamphetamine precursors. AB 2586 will allow greater access to treatment in place of incarceration for veterans who committed an offense as a result of combat-induced stress or problems.

The Governor reviewed and decided on the following 23 bills related to criminal justice and corrections issues.

NEW LAWS SIGNED BY SCHWARZENEGGER

SB 1318 (Cedillo) Controlled substances: drug sales near shelters and treatment centers

SB 1318 provides that any person convicted of trafficking heroin, cocaine, cocaine base, methamphetamine or phencyclidine on the grounds of, or within 1,000 feet of a drug treatment center, detoxification facility, or homeless shelter will be imprisoned in state prison for one additional year on top of any sentence required under existing law. There are certain exceptions to this sentence enhancement that may be exercised by the judge so long as aggravating factors do not weigh against them. These include findings that the defendant is homeless or addicted to controlled substances or engaged in drug sales to guarantee a personal supply. Should it be found that the defendant was preying on homeless individuals or others seeking treatment, selling for monetary compensation or attempted to recruit other individuals to sell, the judge should not strike the enhancement. The text of the law will be added at Health and Safety section 11380.7.

SB 1469 (Cedillo) Medi-Cal: eligibility: juvenile offenders

SB 1469 requires a county juvenile detention facility to provide ward information to the appropriate county welfare department for the determination of a ward's Medi-Cal eligibility. The bill requires the establishment of protocols to fulfill this requirement by June 1, 2007, and the implementation of the protocols by January 1, 2008. The bill requires that the county welfare department provide sufficient documentation to enable a ward to receive medical care upon release from custody. The bill was signed and amends Welfare and Institutions Code section 14029.5.

AB 2586 (Parra) Sentencing: veterans: treatment programs

AB 2586 states that it is the intent of the legislature to extend the opportunity for alternative sentencing to all combat veterans, regardless of the time or place of their

service. The bill modified an existing law that allowed a court to order a convicted Vietnam veteran with substance abuse or psychological problems into the custody of federal correctional officials for incarceration equivalent to that which would be served in state prison. The new law will instead require that any veteran who alleges that he or she committed an offense as a result of post-traumatic stress disorder, substance abuse or psychological problems resulting from combat service with the U.S. military will receive a hearing prior to sentencing to determine the validity of the allegation. If the court finds that the crime was committed because of a disorder related to combat, and the defendant is placed on probation, the court may place the defendant into a treatment program. The new law will amend Penal Code section 1170.9.

SB 1128
(Alquist) Sex Offender Punishment, Control, and Containment Act of 2006

SB 1128 requires courts to maintain all records relating to misdemeanor actions that result in a sex offender registration requirement for 75 years. It also requires every district attorney's office and the Department of Justice to retain records relating to a registered sex offender for 75 years after the disposition of the case. Existing law requires that records related to felonies are kept for 75 years. SB 1128 also amends existing law by specifying several additional offenses that require imprisonment for life with the possibility of parole. It adds rape committed in concert and committing lewd and lascivious acts to a list of sexual acts that, when committed following a kidnapping with intent to commit such acts, will result in imprisonment in the state prison for life with the possibility of parole. Further, assault with the intent to commit any of several specified sexual acts while in the commission of a first degree burglary will require imposition of a life sentence with the possibility of parole.

SB 1128 changes the age elements of aggravated sexual assault of a child. The victim may now be 14 years of age and the perpetrator may be seven or more years older than the victim. In addition, the types of sex offenses to which it applies are expanded. The law requires the imposition of a 15-year to life sentence and consecutive sentences must be imposed for each offense that results in a conviction under the provision. The new law also creates new offenses for persons who arrange a meeting with a minor or person he or she believes to be a minor for the purpose of lewd exposure and for persons who actually go to the arranged meeting. SB 1128 further increases penalties for continuous sex abuse of a child and requires that any substantial sexual conduct involving the same child must be charged separately.

A new crime is also created to punish persons who, motivated by an unnatural or abnormal sexual interest in children, engage in unlawful conduct with an adult whom he or she believes to be a child. Finally, existing law will be amended to punish any adult who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger with 25 years to life; any adult who engages in oral copulation or sexual penetration will be sentenced to 15 years to life in prison. The amended record-keeping provisions may be found at Government Code section 68152. The criminal provisions amend various Penal Code sections.

SB 1178 (Speier) Sex offenders: continuous electronic monitoring

SB 1178 requires every person who is required to register as a sex offender to be subject to the State-Authorized Risk Assessment Tool for Sex Offenders. A committee formed to review the risk assessment may be required to research assessment tools for females and juveniles, and to advise the legislature and Governor of findings. The tool must be used by the CDCR to assess every eligible incarcerated individual or on parole for the risk of re-offending. Probation departments must also use the tool on all eligible individuals under their supervision. Additionally, any sex offender on parole or probation who is assessed to be at high risk for reoffending must be continuously electronically monitored unless a judge determines that such monitoring is unnecessary. Probation departments and parole must report on the effectiveness of the electronic monitoring. The new law declares that it is to take effect immediately as an urgency statute. It amends Penal Code sections 1202.8 and 3004 and adds Penal Code sections 290.04 through 290.06.

SB 1222 (Ackerman) Crime: criminal gangs.

SB 1222 will add various crimes to existing law related to participation in a criminal street gang. Under existing law, any person who participates in a gang with knowledge that its members engage in a pattern of criminal activity must be punished with an enhanced sentence as provided by statute. SB 1222 adds new offenses to already enumerated crimes that can serve to increase a sentence when performed for the benefit of criminal street gang activity. Those crimes are: the prohibited possession of a firearm; carrying a concealed weapon; and carrying a loaded firearm. The judge can increase the sentence by two, three, or four years, at the court's discretion, to be served consecutive to any other sentence imposed for the felony or attempted felony committed. If the judge determines that the felony is serious, as defined by statute, the court may enhance the sentence by five years. The new law will amend Penal Code section 186.22.

SB 1261 (McClintock) Criminal justice statistics

SB 1261 requires the Department of Justice to collect specified criminal justice information from local law enforcement agencies and to prepare an annual report presenting the data. The data to be collected will include crimes reported, number of clearances, and clearance rates reported by the local agencies. The resulting annual report must also be made accessible online through the Department of Justice's Web site. The new law is added at Penal Code section 13013.

SB 1299 (Speier) Controlled substances: precursors: phencyclidine or methamphetamine

SB 1299 reorganizes existing law that makes simultaneous possession of specified substances with the intent to manufacture methamphetamine or phencyclidine (PCP) a

felony punishable by two, four or six years in prison. The new law also makes the possession of specified chemicals with an intent to sell, transfer or otherwise furnish those chemicals to another knowing that they will be used to manufacture methamphetamine or PCP a felony punishable by 16 months, two or three years. The law is codified at Health and Safety Code section 11383 and 11383.5.

SB 1390 (Poochigian) Crime Statistics

SB 1390 requires the addition of identity theft crimes to a list of offenses reported by the Department of Justice in an annual report prepared for the Governor, public officials and others. Under existing law, the report must be printed or otherwise prepared to enable the Attorney General to distribute the report to public officials who deal with criminals and in other channels where the reports will add to public education. The new law is added at Penal Code 13012.6.

SB 1626 (Ashburn) Juvenile crime

SB 1626 deletes provisions that require the agreement of the attorneys before a judge can order deferred entry of judgment in a juvenile case. Under existing law, enacted by Proposition 21 in 2000, a court can grant deferred entry of judgment if the minor admits to charges, waives time for the pronouncement of the judgment and has the agreement of the prosecuting attorney, defense attorney and the judge or his or her designee. Under the new law, a judge may, upon a finding that a minor is suitable for deferred entry of judgment and would benefit from education, treatment and rehabilitation efforts, grant deferred entry of judgment. The law passed with 2/3 of the legislature's support, as required to amend an initiative statute. The law amends Welfare and Institutions Code section 790.

SB 1742 (Machado) Juvenile justice

SB 1742 replaces the Division of Juvenile Justice for the Youth Authority as the entity responsible for accepting individuals who will be materially benefited by its reformatory and educational discipline. The Division on Juvenile Justice must also have adequate facilities to provide that care in order to accept an individual. The law deletes provisions that previously required the Youth Authority to certify that staff and institutions are available for the care of borderline psychiatric or borderline mentally deficient cases or sex deviates, or others suffering from behavioral disorders in order to accept a person committed to it. Also, the new law deletes the requirement that the director of the Youth Authority notify the committing court of the place to which the person would be transported and a time at which that person can be received prior to the transportation of any individual to a Youth Authority facility. Finally, the law amends the requirement that the directors of the Youth Authority and the State Department of Mental Health meet at annually to confer and establish policy with respect to which Department would best serve certain types of individuals to require the Director of the State Department of Mental Health to meet with the Chief Deputy Secretary of the Division on Juvenile Justice to establish policy on this issue. The law amends Welfare and Institutions Code

section 736.

BILLS VETOED BY SCHWARZENEGGER

SB 795 (Romero) Juvenile facilities: parole violators

SB 795 would have required the Chief Deputy Secretary of the Division of Juvenile Justice to enter into an agreement with one or more counties to provide services for juvenile parole violators, including services in a custodial setting or facility operated by the county as an alternative to recommitment in a facility operated by the DJJ. Existing law permits the Chief Deputy Secretary of the DJJ to enter into agreements with counties to allow the transfer of juveniles under DJJ jurisdiction into the custody of an appropriate facility run by the county, city or both if the DJJ facility official agrees.

The Governor vetoed the bill, stating that the requirement that DJJ must enter into contract with a county could “unduly favor certain counties or even force the State into a contract regardless of whether that contract is in the best interests of juvenile parole violators.” The Governor explained that the juvenile justice system is in the process of addressing parole deficiencies. He also stated that the 2006/07 budget includes “\$10 million for a new community reentry program that will award grants to provide juvenile parolees with services that help ensure that they are successful in the community.”

The veto message is available at http://gov.ca.gov/pdf/press/sb_795_veto.pdf.

SB 1589 (Romero) Division of Juvenile Justice: specialized programs

SB 1589 would have required the DJJ to explore options to provide specialized programs both inside and outside of DJJ facilities for female juvenile offenders. The bill acknowledged the small number of female juvenile offenders and sought to address the specific needs of young female offenders through specialized programs that would adhere to the remedial requirements of the Safety and Welfare Plan produced in the *Farrell v. Hickman* lawsuit. Finally, the bill required the DJJ to seek the approval of the Legislature prior to any transfer of the Ventura Youth Correctional Facility to the Division of Adult Institutions.

The Governor vetoed the bill, explaining that pursuant to the Safety and Welfare Plan in *Farrell*, the DJJ is currently working on the development and implementation of gender-specific services. For this reason, the Governor stated that the bill was unnecessary and would encourage redundant activities.

The veto message is available at http://gov.ca.gov/pdf/press/sb_1589_veto.pdf.

SB 1373 (Romero) Division of Juvenile Justice: parole: consideration dates

SB 1373 would have required the DJJ to pursue in good faith the reduction of the

average length of institutional stay in DJJ facilities and a reduction of net time added to all ward parole consideration dates for disciplinary reasons. Under existing law, the Division of Juvenile Facilities of the DJJ to set all initial parole consideration dates for juveniles in DJJ jurisdiction.

The Governor vetoed this bill, stating that the objectives sought by this bill “do not necessarily indicate that the State is providing wards with better services.” The Governor admonished the State to focus on improving treatment, education and rehabilitation of the wards under DJJ jurisdiction.

The veto message is available at http://gov.ca.gov/pdf/press/sb_1373_veto.pdf.

SB 1521 (Romero) Corrections: media access

SB 1521 would require the Department of Corrections and Rehabilitation, upon reasonable notice, to permit representatives of the news media to interview prisoners in person. It would have prohibited the interview of a prisoner or parolee against his or her will, and prohibited retaliation against an inmate for participating in any visit with news media or communication with news media. Existing regulation permits media representatives to seek prior approval to access state prisons and conduct random interviews with inmates.

The Governor vetoed this bill, stating that it would “glamorize murderers and traumatize crime victims and their families.” The Governor supports media access to prisons to “let the sun shine in” on a system plagued with problems. He indicated that he was directing the CDCR to change its regulations to allow media access to prisons, but to limit inmate access to media.

The veto message is available at http://gov.ca.gov/pdf/press/sb_1521_veto.pdf.

SB 814 (Romero) Prisons: segregation

SB 814 would have required the CDCR to eliminate segregation for male and female inmates based solely on race while ensuring the security of inmates, the correctional facilities and the public. The bill would have required CDCR to educate staff regarding housing procedures, to develop a violence tracking system for reception centers and the general inmate population designed to record, track, and analyze violent incidents. A draft organizational plan would have been required to address staff responsibilities and timeframes for implementation of the change.

The Governor vetoed the bill, stating that the language of the proposed statute mirrored provisions of the Settlement and Release Agreement resulting from *Johnson v. California*. The prisoner in that case argued that the CDCR’s practice of assigning temporary cellmates based on racial classification violated the U.S. Constitution’s equal protection clause. In 2005, the U.S. Supreme Court determined, in a 5-3 opinion, that the practice was subject to strict scrutiny. The Court held that racial classifications are

subject to strict scrutiny even when they affect all races equally, thus the case was remanded to the Ninth Circuit so that court could decide whether the challenged practice served a compelling state interest and was necessary to serve that interest.

The veto message is available at http://gov.ca.gov/pdf/press/sb_814_veto.pdf.

SB 1544 (Migden) Criminal investigations: eyewitness identification: lineups

SB 1544 would have declared the legislature's intent that law enforcement officials study and consider new policies and procedures regulating eyewitness lineup identifications to ensure a reduction in misidentifications. Under existing law, law enforcement officials are not regulated as to the preparation for or conduct of eyewitness photo or live lineup identifications. To increase the reliability of eyewitness photo and live identifications, this bill would have required the development of proper guidelines and allowed opinion testimony from expert witnesses regarding the reliability of eyewitness identification if such testimony was relevant.

The Governor vetoed this bill, stating that the desire to guarantee reliable eyewitness identification was a "laudable goal" but that the bill went too far by requiring the creation of guidelines. The Governor stated that the legislative process would be subverted should such guidelines be created without the opportunity for the public or its representatives to vote on them.

The veto message is available at http://gov.ca.gov/pdf/press/sb_1544_veto.pdf.

SB 1616 (Kuehl) Juveniles: incarceration: Medi-Cal: SSI: SSDI

SB 1616 would have required the CDCR and the DJJ to identify any ward with a disability who is likely to be eligible for the Medi-Cal program upon release and ensure that the ward files an application for coverage prior to release from custody. The bill declared the importance of providing basic supports to juveniles returning from a period of custody in order to prevent the cycle of "destitution, deterioration, rearrest and reincarceration." This bill acknowledged that juveniles with disabilities require services as they transition back into the community after confinement. All wards identified as eligible for Medi-Cal benefits would possess a Medi-Cal eligibility document upon release. The bill also required that the DJJ request the Social Security Administration to suspend, rather than terminate, benefits of an incarcerated youth during his or her incarceration. Should the benefits be terminated, it also required the DJJ to ensure that a new application for those benefits is filed on behalf of the ward prior to his or her release.

The Governor vetoed this bill, explaining that it would result in costly and duplicative administrative activities. He mentioned that he had signed SB 1469, a bill consistent with the intention to ensure access to medical care for juveniles returning from custody in local juvenile detention facilities.

The veto message is available at http://gov.ca.gov/pdf/press/sb_1616_veto.pdf.

AB 2004 (Yee) Medi-Cal: juveniles: incarceration

AB 2004 would have prohibited the use of inmate status to terminate the eligibility of a minor under the Medi-Cal program. Under existing law, Medi-Cal is administered by the State Department of Mental Health and provides health care benefits to qualified low-income individuals. It is not available to an inmate of an institution except in limited situations. This bill would have required the Department of Mental Health suspend health care benefits for a minor in the custody of an institution, rather than terminate them. It would also have required that access to health care services be made immediately available upon the termination of a minor's custody in an institution. Any applications for Medi-Cal benefits filed by a minor would have been required to be processed in a manner that would enable a minor immediate access to health services upon release.

The Governor vetoed this bill, explaining that the language in SB 1469 provided better coordination at the local level to ensure access to medical care. The Governor stated that better collaboration is required between county probation, local detention facilities and county welfare departments.

The veto message is available at http://gov.ca.gov/pdf/press/ab_2004_veto.pdf.

AB 2712 (Leno) Housing: sex offenders

AB 2712 would have clarified a lessor's duties regarding the tenancy of an individual required to register as a sex offender. It would have specified that no duty arises for a lessor solely for renting or leasing residential real property to a person who is required to register as a sex offender in this state, or who has a conviction as a sex offender in another jurisdiction. Existing law requires the registration of individuals convicted of specified sex offenses with the Department of Justice and the local law enforcement agency in the area where they live. Existing law further requires that leases and sales contracts for real property contain a provision regarding registered sex offenders. Generally, upon delivery of that notice in the contract, the lessor or seller of real property is not required to provide additional information other than proximity of sex offenders. This bill would have declared the Legislature's intent with respect to lessor's rights and obligations when property is rented or leased to registered sex offenders.

The Governor vetoed this bill, stating that it prioritized property-owner liability over tenant safety.

The veto message is available at http://gov.ca.gov/pdf/press/ab_2712_veto.pdf.

AB 2917 (Liu) Inmates: female offenders

AB 2917 would have made legislative findings and declarations regarding the unique

needs of female state prisoners and their families. The bill would have established a three-year commission to evaluate the conditions of these inmates and make findings and recommendations in order that the Department of Corrections and Rehabilitation may develop gender responsive strategies and programs.

The Governor vetoed this bill because its requirements would duplicate the work of the Gender Responsive Strategies Commission established in 2004.

The veto message is available at http://gov.ca.gov/pdf/press/ab_2917_veto.pdf.

AB 1677 (Koretz) Corrections: condom distribution

AB 1677 would have required the director of the CDCR to allow any nonprofit or health care agency to distribute sexual protection devices, like condoms and other prophylactics. Under existing regulation, inmates are prohibited from engaging in sexual acts. The bill stated that the distribution of protection would not be considered a crime, nor shall it be deemed to encourage sexual interaction between inmates. Possession of distributed devices could not be used as evidence of illegal activity for purposes of administrative sanctions.

The Governor vetoed this bill because it would conflict with Cal. Penal Code section 286(e) prohibiting the act of sodomy in a state prison or local detention facility.

The veto message is available at http://gov.ca.gov/pdf/press/ab_1677_veto.pdf.

SB 1320 (Cedillo) Probation: Los Angeles County

SB 1320 would have required a portion of the money appropriated from the General fund to the Department of Alcohol and Drug Programs be used for the creation of a pilot program to be administered by the Los Angeles County Superior Court relating to the probation of nonviolent felony offenders with a history of substance abuse or mental illness.

The Governor vetoed this bill.

Sources and Note:

Sources include the California State Senate Legislative Portal, the California State Assembly website, and the Governor's legislative updates.

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development and technical assistance in the criminal justice field. For more information, please visit www.cjcj.org or contact Megan Corcoran at 415-621-5661, ext. 309.