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**From:** Poole, Dia [Dia.Poole@jud.ca.gov]  
**Sent:** Friday, July 01, 2011 4:19 PM  
**To:** General: Bench-Bar Coalition-copy  
**Subject:** BBC: AB 109/AB 117 - Criminal Justice Realignment Act: October 1, 2011, implementation information

To: Bench-Bar Coalition Members

The following overview on the Criminal Justice Realignment Act is provided for informational purposes only. Thank you. dp

As you may know, in addition to the main budget bill, the Legislature passed and the Governor signed a criminal justice realignment funding mechanism to trigger the operation of the Criminal Justice Realignment Act (Act). Also signed last night was a budget trailer bill, AB 117 (Committee on Budget), Stats. 2011, ch. 39, which substantially modifies the realignment provisions enacted in AB 109.

In addition to sweeping changes to felony sentencing practices, the Governor's criminal justice realignment assigns courts a new and significant role in the revocation process for offenders who violate their terms or conditions of postrelease supervision or parole.

In response to input of the Judicial Council, AB 117 significantly narrows the court role in postrelease supervision to only the final revocation process. The bill also defers the operative date of the Act from July 1, 2011, to October 1, 2011, and defers the portion of the Act relating to the court's role in revocation proceedings for persons under *state parole supervision* to July 1, 2013. Provisions in AB 109 that would have created a role for the courts in appeals from denials of custody credits, proceedings involving discharge from parole, and overseeing the activities of the supervising agencies have been repealed in AB 117.

Key court-related provisions of the Act and a summary of current implementation efforts are provided below. AB 117 (as enrolled on June 28, 2011) may be viewed at the following link: [http://leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0101-0150/ab\\_117\\_bill\\_20110628\\_enrolled.pdf](http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_117_bill_20110628_enrolled.pdf) Additional materials will be provided as soon as possible.

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## **2011 Criminal Justice Realignment Act (AB 109/AB 117)**

### **Summary of Key Court-related Provisions**

#### **I. SENTENCING**

The Act will eliminate prison as a sentence option for various felonies and authorize courts to impose terms of over one year in county jail for certain felonies committed by specified defendants. There is no limit to the amount of time that may be served in county jail if the conviction is for an offense punishable by imprisonment in county jail. Offenders who serve their sentences in county jail pursuant to this change in the law are not subject to parole or postrelease supervision. However, when granting probation, the court will be authorized to impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence. (Penal Code section 1170(h). Effective October 1, 2011.)

#### **II. REVOCATION HEARING OFFICER**

Superior courts will be authorized to appoint hearing officers to carry out the duties of the courts in conducting parole and community postrelease revocation hearings. Appointment to serve as a revocation hearing officer will require that the individual has been an active member of the State Bar for at least 10 years continuously prior to appointment, was a

judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program, or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years. The superior courts of two or more counties may appoint the same person as a hearing officer.

(Government Code section 71622.5. Effective October 1, 2011.)

### III. POSTRELEASE COMMUNITY SUPERVISION

Postrelease Community Supervision: Persons released from state prison on or after October 1, 2011, after serving a prison term for a felony that *is not* a serious felony (as described in section 1192.7(c)), a violent felony (as described in section 667.5(c)), a third strike (pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12), a crime where the person is classified as a High Risk Sex Offender, or a crime where the person is required as a condition of postrelease supervision to undergo treatment by the California Department of Mental Health, will be supervised by a county agency, such as a probation department (to be determined by the Board of Supervisors). All other persons released from state prison on or after October 1, and all persons currently on parole, will continue to be supervised by state parole.

(Penal Code section 3451. Effective October 1, 2011.)

Violation of Condition of Postrelease Community Supervision: County supervising agencies will have authority to dispose of violations of conditions of postrelease supervision using authorized intermediate sanctions up to and including a period of "flash incarceration" in county jail for up to 10 days. There is no court involvement in cases disposed of in this way.

(Penal Code section 3454. Effective October 1, 2011.)

Revocation of Postrelease Supervision: If a supervising county agency determines, following application of its assessment processes, that authorized intermediate sanctions up to and including flash incarceration are not appropriate, the supervising county agency shall petition the revocation hearing officer to revoke and terminate postrelease supervision. The Judicial Council must adopt forms and rules of court to establish uniform statewide procedures to implement the final revocation process.

Upon a finding that the person has violated the conditions of postrelease supervision, the revocation hearing officer shall have authority to (1) return the person to postrelease supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail; (2) revoke postrelease supervision and order the person to confinement in the county jail; or (3) refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the hearing officer's discretion. Confinement upon revocation of postrelease supervision shall not exceed a period of 180 days.

(Penal Code section 3455. Effective October 1, 2011.)

### IV. STATE PAROLE SUPERVISION

Phase I (October 1, 2011, to July 1, 2013): Persons released from state prison on or after October 1, 2011, who do not meet the criteria described above for postrelease community supervision will continue to be subject to the jurisdiction of and parole supervision by the California Department of Corrections and Rehabilitation. Until July 1, 2013, the Board of Parole Hearings will continue to conduct all revocation proceedings. There is no court involvement in revocation of parole for these individuals during Phase I.

(Penal Code section 3000.08. Effective October 1, 2011, and operative until July 1, 2013.)

Phase II (Beginning July 1, 2013): The supervising parole agency will have authority to dispose of violations of conditions of parole using authorized intermediate sanctions up to and including a period of "flash incarceration" in county jail for up to 10 days. There is no court involvement in cases disposed of in this way. If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate, the supervising agency shall petition the revocation hearing officer to revoke parole. The Judicial Council must adopt forms and rules of court to establish uniform statewide procedures to implement the final revocation process.

Upon a finding that the person has violated the conditions of parole, the revocation hearing officer shall have authority to (1) return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail; (2) revoke parole and order the person to confinement in the county jail; or (3) refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the hearing officer's discretion. Confinement upon revocation of parole shall not exceed a period of 180 days. (Penal Code section 3000.08. Effective July 1, 2013.)

**V. COMMUNITY CORRECTIONS PARTNERSHIP**

Each county's local Community Corrections Partnership is required to recommend a local plan to the county board of supervisors for the implementation of the Act. The plan shall be voted on by an executive committee consisting of the chief probation officer of the county as chair, a chief of police, the sheriff, the District Attorney, the Public Defender, the presiding judge of the superior court, or his or her designee, and specified county representatives.

**VI. DIVISION OF JUVENILE JUSTICE**

AB 117 eliminates the provision in AB 109 that was intended to realign funding for the Division of Juvenile Justice (DJJ) and make commitments to DJJ contingent on a memorandum of understanding between the county placing a ward and the state. While AB 117 failed to revise the section that makes commitments contingent on the repealed provision, the Governor's office has indicated that this section will also be restored to its pre-AB 109 status, thereby continuing the authority of the court to commit wards to DJJ as it is in current law. However, SB 92, the public safety trailer bill, provides that if the revenue estimates upon which the budget is built are not realized, then beginning January 1, 2012, counties would be required to pay \$125,000 annually for each ward in the custody of DJJ. SB 92 would also give the courts expanded authority to recall wards from DJJ facilities or parole. Under current law these recalls are only for wards with lower level offenses, but SB 92 would remove those limitations if the county payment provision is triggered to allow counties some flexibility in reducing the burden of this requirement.

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**AOC Implementation Activities Currently Underway**

**RESOURCES:** The 2011 Budget Act appropriates \$17,782,000 – \$93,000 of which is intended to be used for education activities – and \$1,149,000 for court security, for the estimated increase in the courts' caseload, based on the new, narrower, court role enacted in AB 117. Because of the many implementation uncertainties surrounding realignment, including uncertainties in projecting caseload, this funding is built on assumptions of a higher caseload than is likely to occur, a full judge's salary, and the need for new facilities in every county. As a result, the judicial branch is being requested to provide information on caseload and implementation expenditures in order to allow this appropriation to be refined as implementation moves forward.

**ALLOCATION OF RESOURCES:** The California Department of Finance is compiling county-by-county caseload projections and expects to provide that to the AOC shortly. Using those projections, the AOC Finance Division will work with the Judicial Council's Trial Court Budget Working Group to develop recommendations to the council for allocation of the funds. The working group's recommendations are expected to be presented to the Judicial Council at its August 26, 2011, meeting.

**JUDICIAL COUNCIL FORMS AND RULES OF COURT:** The Judicial Council's Criminal Law Advisory Committee has formed an informal working group to assist the committee in developing forms and rules of court to facilitate court involvement in the final revocation procedures summarized above. Committee proposals will be circulated to all courts for feedback as soon as possible.

**EDUCATION:** The AOC Education Division/CJER has begun to outline a delivery approach for expected statewide education needs for both revocation hearing officers and court staff. A preliminary outline includes broadcasts and online resources, and benchguide materials and associated resources for revocation hearing officers.

**IMPLEMENTATION STEERING COMMITTEE**: A steering committee of judges and court managers will be formed shortly to guide AOC efforts to assist courts in implementation.

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