

Date of Hearing: April 7, 2026
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 2438 (Johnson) – As Introduced February 20, 2026

SUMMARY: Requires a county jail eligible felony sentence to be served in state prison if the total term of imprisonment exceeds 6 years.

EXISTING LAW:

- 1) Defines a "felony" as "a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under [criminal justice realignment]." (Pen. Code, § 17, subd. (a).)
- 2) States that the punishment for a felony not otherwise prescribed is 16 months, or two or three years in state prison, unless the offense is punishable in the county jail pursuant to realignment. (Pen. Code, § 18, subd. (a).)
- 3) Prohibits a term of more than one year in the county jail except for executed felony sentences under realignment. (Pen. Code, §19.2.)
- 4) Specifies where the defendant has a prior or current felony conviction for a serious felony, or a prior or current conviction for a violent felony, has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony or a violent felony, or is required to register as a sex offender, or is convicted of a crime and as part of the sentence a specified enhancement is imposed, an executed sentence for a felony shall be served in state prison. (Pen. Code, § 1170, subd. (h)(3).)
- 5) Provides that a felony not specified in the above provision shall be punishable by a term of imprisonment in the county jail. (Pen. Code, § 1170, subd. (h)(1) & (2).)
- 6) Provides that for purposes of county-jail eligibility, any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender, is not subject to dismissal under Penal Code section 1385. (Pen. Code, § 1170, subd. (f).)
- 7) Designates about 70 felonies as state-prison offenses. (See e.g., Pen. Code, §§ 86 [bribes involving member of the Legislature], 92 [bribes involving judicial officer or juror], 191.5, subd. (c)(1) [gross vehicular manslaughter while intoxicated], 266i [pandering].)
- 8) Requires the court to suspend execution of a concluding portion of the term of a county-jail-eligible felony sentence for a period selected at the court's discretion, unless the court finds that in the interests of justice it is not appropriate in a particular case. The suspended part of

the sentence is known as mandatory supervision. (Pen. Code, § 1170, subd. (h)(5).)

- 9) Requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR):
 - a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
 - b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
 - c) A person serving a Three-Strikes sentence;
 - d) A high risk sex offender;
 - e) A mentally disordered offender;
 - f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
 - g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subs. (a) & (i).)
- 10) Requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b), & 3451.)
- 11) Requires all persons paroled before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09.)
- 12) States that the parole period for most offenders is three years, except as specified. (Pen. Code, § 3000, subd. (b).)
- 13) Limits the term for PRCS to three years. (Pen. Code, § 3451, subd. (a).)
- 14) Provides for intermediate sanctions for violating the terms of parole or PRCS, including "flash incarceration" for up to 10 days. (Pen. Code, §§ 3000.08, subd. (d) & 3454.)
- 15) Specifies that if parole or PRCS is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, §§ 3000.08, subd. (g) & 3455, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “As a freshman elected official, public safety is a top priority. For too long, our state’s criminal justice realignment policies have led to overcrowded county jails and underleveraged state prisons. AB 2438 will finally address this problem by requiring individuals convicted of felony sentences greater than six years to be sent to state prison, rather than county jail. Jail was never meant to be a place to hold individuals for more than a few years. Now, with declining state prison populations, AB 2438 provides a solution to ensure our resources are properly leveraged and county jail overcrowding is decreased.”
- 2) **Criminal Justice Realignment Act of 2011 and Prison Overcrowding:** Effective until October 1, 2011, a felony was a crime punishable by death or imprisonment in state prison. (Pen. Code, § 17.) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which persons could be sent to state prison, required that more persons serve their sentences in county jails, and affected parole supervision after release from custody. The changes under criminal justice realignment apply to persons sentenced on or after October 1, 2011—these changes are not retroactive. (Pen. Code, § 1170, subd. (h).)

Criminal justice realignment provides that numerous felonies are punishable by a term of imprisonment in county jail – *not prison* – unless the crime or a defendant’s criminal history makes the defendant ineligible for serving their felony sentence in jail. (*Id.*)

The following persons are statutorily ineligible to serve any executed felony sentence in county jail:

- Has a *prior or current* felony conviction for a serious felony or a violent felony;
- Has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious or violent felony in California, as specified;
- Is required to register as a sex offender; or
- Is convicted of a crime and as part of the sentence receives an aggravated white collar crime enhancement, as specified. (*Id.*)

In addition to the serious, violent, or registerable offenses mandated for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody.

- 3) **Prison Overcrowding Litigation:** The purposes of criminal justice realignment include reducing recidivism by facilitating the reintegration of low-level offenders into society, and managing incarcerated person more cost-effectively. (See Pen. Code, § 17.5, subd. (a)(5).) However, although not stated in the legislation, one of the main underlying reasons for realignment was concerns for prison overcrowding. In November 2006, plaintiffs in two class action lawsuits—*Plata v. Brown* (involving CDCR medical care) and *Coleman v. Brown* (involving CDCR mental health care)— filed motions for the courts to convene a three-judge panel pursuant to the federal Prison Litigation Reform Act. The plaintiffs argued that persistent overcrowding in the state's prison system was preventing CDCR from delivering constitutionally adequate health care to incarcerated persons. The three-judge panel declared that overcrowding in the state's prison system was the primary reason that CDCR was unable to provide incarcerated persons with constitutionally adequate health care. In January 2010, the three-judge panel issued its final ruling ordering the State of California

to reduce its prison population by approximately 50,000 individuals in the next two years. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.)

The United States Supreme Court upheld the decision of the three-judge panel, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” persons in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939.) Without changes to how the prison population was managed, the court decisions could have led to arbitrary release of tens of thousands of people in prison.

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016. The court also ordered California to implement the following population reduction measures in its prisons:

- a) Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- b) Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- c) Release inmates who have been granted parole by BPH but have future parole dates.
- d) Expand the California Department of Corrections and Rehabilitation's (CDCR) medical parole program.
- e) Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- f) Increase its use of reentry services and alternative custody programs.

(Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) Following the implementation of these measures along with the passage of Proposition 47 (approved by California voters in November 2014), California met the federal court's population cap in December 2015. (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown*.)

According to the Legislative Analyst's Office (LAO): “While the state has undergone various changes to reduce overcrowding prior to the passage of the realignment legislation-including transferring inmates to out-of-state contract facilities, construction of new facilities, and various statutory changes to reduce the prison population-- the realignment of adult offenders is the most significant change undertaken to reduce overcrowding.”¹

¹ See LAO report: *Refocusing CDCR After the 2011 Realignment* (Feb. 23, 2012), p.3, [The 2012-13 Budget: Refocusing CDCR After The 2011 Realignment \(ca.gov\)](#).)

This bill would alter how felony sentencing is handled under realignment by providing that any felony sentence exceeding 6 years must be served in state prison. As discussed above, existing law states that a person may be ineligible to serve their sentence in county jail based on the current charge or prior charge or if they are required to register as a sex offender. Under existing law, there is no term-based threshold for which felonies must be served in prison or jail.

While CDCR is currently in compliance with the three-judge panel's order on the prison population,² the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) Adding circumstances that require additional sentences to be served in state prison rather than county jail is contrary to the original intent of 2011 criminal justice realignment act and reverses the progress made in reducing prison overcrowding.

- 4) **Realignment Funding and Data:** As part of criminal justice realignment, the state shifted certain revenues to local governments. As explained by the LAO: "(T)he 2011–12 budget package included statutory changes to realign several criminal justice and other programs from state responsibility to local governments, primarily counties. Along with the shift, or realignment, of programs, state law realigned revenues to locals. Specifically, current law shifts a share of the state sales tax, as well as Vehicle License Fee revenue, to local governments. The passage of Proposition 30 by voters in November 2012, among other changes, guaranteed these revenues to local governments in the future. The Governor's budget includes an estimate of revenues projected to go to local governments over the next few years. These estimates are generally in line with prior estimates. (T)otal funding for the criminal justice programs realigned is expected to increase from \$1.4 billion in 2011–12 to \$2.2 billion in 2013–14."³

Proposition 30 gave counties broad authority on how to spend funds allocated for public safety services, including:

- Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings, and court security staff.
- Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders.
- Preventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services.
- Providing mental health services to children and adults to reduce failure in school, harm to self or others, homelessness, and preventable incarceration or institutionalization.

² As of December 10, 2025, CDCR's institutional design capacity was 71,656 and the adult institutional population occupied 122 percent of design capacity. (*Three-Judge Court Quarterly Update*, CDCR (Dec. 2025).)

³ *The 2013-14 Budget: Governor's Criminal Justice Proposals*, LAO (Feb. 15, 2013), pp. 8-9.

- Preventing, treating, and providing recovery services for substance abuse. (See Cal. Const., art. XIII, § 36.)

This bill requires any felony sentence exceeding 6 years to be served in state prison rather than in county jail regardless of the offense committed or the criminal history of the defendant. It is unclear how many offenders would have to serve their sentences in state prison under this bill, but it would likely be significant. Because realignment funding to the counties through Proposition 30 is constitutionally protected, does shifting offenders back to state prison without a readjustment of funds provide a windfall to the counties?

Recently, the Legislature enacted AB 1080 (Ta), Chapter 96, Statutes of 2023, to require the LAO to prepare and submit a report to the Legislature evaluating the results of criminal justice realignment over the previous 10 years. The law requires LAO to provide data on specified aspects of realignment including sentencing practices, jail population, supervision practices and recidivism outcomes. Additionally, the law requires LAO to provide information on the amount of funding received per county and how that funding was allocated, including but not limited to: funding received by department or agency, all types of facilities construction, the number and type of additional personnel, rehabilitative programming, and any other services. (Pen. Code, § 13400, subd. (a).) This report is due to the Legislature by June 30, 2026.

While there have been several reports published by the Public Policy Institute of California studying the impacts of criminal justice realignment, this report is the first to be required by the Legislature. Should any proposed changes impacting realignment be stayed until the report has been completed?

- 5) **Argument in Support:** According to the *California Police Chiefs Association*, “AB 2348 addresses a critical and ongoing concern facing law enforcement across California: the continued strain on local systems caused by reduced state correctional capacity. Over the past decade, California has significantly reduced its prison population through a combination of sentencing changes, expanded credits, and realignment policies. While these changes have achieved population reduction goals, they have also created substantial downstream impacts that continue to challenge local law enforcement and correctional systems.

“As a result of these policies, county jails—originally designed for shorter-term detention—are now housing individuals for extended periods, in some cases for multiple years. This shift has placed unsustainable pressure on local systems and has required difficult decisions regarding who can be safely detained. In many cases, lower-level and repeat offenders are released to preserve capacity for more serious individuals, contributing to cycles of reoffending and ongoing public safety concerns.”

- 6) **Argument in Opposition:** According to *Smart Justice California*, “In 2011 Governor Jerry Brown signed AB 109, commonly referred to as ‘prison realignment,’ which shifted from the state to counties the responsibility for incarcerating most people convicted of crimes and sentenced to incarceration. This reform advanced public safety in several critical ways: First, it reduced the state’s dangerous prison overcrowding, which had resulted in countless lives lost, immeasurable harm to incarcerated people and correctional staff, and extraordinary litigation costs to the state. Second, it tracked the research that shows that incarcerating people closer to their communities is better not only for the incarcerated and their families,

but also for community safety. Lastly, the reform recognized that the state could safely reduce its prison population while saving on incarceration costs. AB 2438 threatens to reverse this progress without any measurable benefit.”

7) **Related Legislation:** None

8) **Prior Legislation:**

- a) AB 1080 (Ta), Chapter 96, Statutes of 2023, requires the Legislative Analyst’s Office to prepare a report, to be submitted to the Legislature on June 30, 2026, evaluating the results of the 2011 Criminal Justice Realignment Act over the previous 10 years and requires the report to contain specified data, including the amount of funding received per county and how that funding was allocated, information on sentencing practices, the impact on the county jail population, information on PRCS practices, and recidivism outcomes.
- b) AB 222 (Cooley), of the 2013-2014 Legislative Session, would have required the sentence for specified drug convictions be served in state prison, instead of county jail, if the weight/volume enhancement in Health and Safety Code section 11370.4 is imposed. AB 22 failed passage in this Committee.
- c) AB 1905 (Logue), of the 2013-2014 Legislative Session, would have required imprisonment in the state prison for a violation of specified provisions relating to controlled substances. AB 1905 was pulled at the request of the author.
- d) SB 957 (Vidak), of the 2013-2014 Legislative Session, would have required defendants convicted of a crime or crimes, and sentenced to an aggregate term of more than ten years shall serve that sentence in prison, instead of county jail. SB 957 failed passage in the Senate Public Safety Committee.
- e) SB 708 (Nielsen), of the 2013-2014 Legislative Session, would have required any defendant who is convicted of a felony and who has been previously been convicted of three or more felonies shall serve his or her sentence in state prison. SB 708 failed passage in the Senate Public Safety Committee.
- f) AB 2 (Morrell), of the 2013-2014 Legislative Session, would have required a person who violates the conditions of parole or of postrelease community supervision (PRCS) by failing to fulfill sex-offender registration requirements to serve time for the violation in prison rather than in the county jail. The hearing on AB 2 was canceled at the request of the author.
- g) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted criminal justice realignment which transferred responsibility of non-violent, non-serious, non-sex offender felonies to county facilities and created the Postrelease Community Supervision Act, which provides, among other things, that inmates released from prison who are not required to be on parole are subject to up to three years of local supervision.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
Riverside County Sheriff's Office

Opposition

ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Local 148 Los Angeles County Public Defender's Union
Smart Justice California, a Project of Beyond Impact

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