

No. 13-198

In the
Supreme Court of the United States

GOVERNOR EDMUND G. BROWN JR., *et al.*,
Appellants,

v.

MARCIANO PLATA AND RALPH COLEMAN, *et al.*,
Appellees.

**Appeals from the United States District Courts
for the Eastern District of California and
the Northern District of California**

JOINT SUPPLEMENTAL BRIEF

DONALD SPECTER
Counsel of Record

STEVEN FAMA
ALISON HARDY
SARA NORMAN
REBEKAH EVENSON
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
(510) 280-2621
dspecter@prisonlaw.com

Counsel for the *Plata*
Appellees

PAUL D. CLEMENT
Counsel of Record

ZACHARY D. TRIPP
MICHAEL H. MCGINLEY
BANCROFT PLLC
1919 M Street NW
Suite 470
Washington, DC 20036
(202) 234-0090
pclement@bancroftpllc.com

Counsel for the *Coleman*
Appellees

(Additional Counsel Listed on Inside Cover)

September 24, 2013

MICHAEL W. BIEN
JANE E. KAHN
ERNEST GALVAN
LISA ELLS
AARON J. FISCHER
KRISTA STONE-MANISTA
MARGOT MENDELSON
LORI RIFKIN
ROSEN BIEN GALVAN &
GRUNFELD LLP
315 Montgomery Street
Tenth Floor
San Francisco, CA 94104
(415) 433-6830

Additional Counsel for *Coleman* Appellees

TABLE OF CONTENTS

SUPPLEMENTAL BRIEF 1

APPENDIX

 S.B. 105, 2013 Reg. Sess.
 (Cal. 2013)..... Supp. App. 1

SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 18.10, Appellees respectfully submit this supplemental brief to address two developments that have occurred since the filing of the joint motion to dismiss or affirm. First, on September 12, 2013, California enacted Senate Bill 105 to ensure that Appellants can comply with the population reduction order without releasing a single prisoner. Supp. App. 1. That statute puts to rest the oft-repeated claim that complying with the Constitution and the directives of this Court and the three-judge district court would endanger public safety. As contemplated in Senate Bill 105, Appellants have filed a motion before the three-judge court seeking modifications based on the intervening legislation. That motion underscores the danger of allowing Appellants to invoke this Court's mandatory jurisdiction every time the three-judge court declines to modify the injunction approved by this Court. Second, after Appellees filed their joint motion to dismiss or affirm, one amicus brief was filed in support of the state's appeal. That brief provides no justification for this Court's plenary review, especially in light of the intervening legislative development.

1. California enacted Senate Bill 105 on September 12, 2013. The legislation appropriates funds for compliance with the population reduction order either by leasing additional prison beds or through long-term population capacity improvements and recidivism reduction measures. On September 16, 2013, Appellants asked the lower court for a three-year extension of time to pursue the latter

course. If that extension is denied, Appellants have promised to achieve compliance before the December 31, 2013 deadline by leasing beds. These developments confirm that this Court lacks jurisdiction and the arguments advanced by Appellants and their amici are wholly unfounded.

A. The stated purpose of Senate Bill 105 is “to avoid early release of inmates and allow the state to comply with the federal court order” in this case. Supp. App. 1 § 1. That stated purpose confirms what Appellees have been saying for years: Constitutional compliance and public safety are not mutually exclusive, and an overcrowding cap need not translate into release orders if California takes its obligations seriously. To achieve the stated purpose, the legislation appropriates \$315 million for one of two means of compliance: (1) by leasing additional beds from private and local prisons within the current deadline for meeting the overcrowding cap, or (2) by funding long-term measures aimed at reducing recidivism and increasing prison capacity, if the three-judge court extends the deadline. Thus, through this legislation, the state has finally taken the steps necessary to comply with the population reduction order this Court affirmed over two years ago—while avoiding the early release of any inmates.

However, the legislation does not specify how the state would increase capacity or otherwise reduce population if granted an extension. Nor does it set any timeline for the promised improvements. Instead, it merely requires the Governor to “begin immediately, in consultation with stakeholders, including appropriate legislative committees, to

assess the state prison system, including capacity needs, prison population levels, recidivism rates, and factors affecting crime levels, and to develop recommendations on balanced solutions that are cost effective and protect public safety.” Supp. App. 1–2 § 1. The state executive branch is then required to convey its recommendations to the Legislature through an “interim report” by April 1, 2014, and a “final report” by January 10, 2015. Supp. App. 2 § 1. But the Legislature is not required to adopt these measures. *See id.* (“It is the *intent* of the Legislature to *consider the reports* along with the Legislature’s independent findings during the annual budget process.” (emphasis added)).

Appellants were equally vague in their extension request, which conspicuously avoids specifying what measures the state would adopt to achieve the 137.5% design-capacity mandate if the extension were granted. Instead, Appellants summarized the useful, but insufficient, measures the state had already taken to reduce population and improve care in its prisons, *see Plata DE 2713/Coleman DE 4803* (“Extension Request”) at 5–9, and then vaguely promised to “build upon these accomplishments” if afforded another three years, *id.* at 9. The only tangible reduction measure mentioned in the extension request was that the legislation authorizes the state “to transfer approximately 2,500 inmates to available capacity in county jails, community correctional facilities and a private prison.” *Id.* at 3. But those transfers will only “reduce the prison population to approximately 145% of design capacity this year.” *Id.* It is unclear how, or when, the remaining reduction would occur.

B. These recent developments confirm that this Court lacks jurisdiction over this appeal. Appellants are actively seeking new modifications to the population reduction order while their appeal challenging the three-judge court's earlier refusal to vacate or modify the order remains pending before this Court. Under Appellants' reading of 28 U.S.C. § 1253, this Court is obligated to review their current appeal, which may or may not be overwhelmed by events in the three-judge court, as well as any appeal arising from Appellants' new request to modify the injunction, and any future appeal based on a refusal to further modify the injunction despite some intervening development, and so on and so forth *ad infinitum*. This endless loop of overlapping direct appeals is certainly not what Congress had in mind when it tightened this Court's mandatory docket by providing direct review only from three-judge district court decisions "granting or denying" an injunction. *See* Motion to Dismiss or Affirm 17–18. The Court should decline Appellants' invitation to make this Court's limited resources available whenever the three-judge court tweaks or declines to tweak an injunction this Court has already approved.

C. Even if this Court had jurisdiction, Senate Bill 105 would confirm that the decisions below should be summarily affirmed. The new legislation completely undercuts the threat of early releases that Appellants and their amici have repeatedly emphasized as a driving reason for this Court to grant plenary review. *See, e.g.*, JS 2–4, 22, 31–33; Amicus Curiae Br. by the Cal. State Ass'n of Counties & the Chief Probation Officers of Cal. 4, 6–7, 11–13. The legislation appropriates funds

specifically to “avoid early release.” Supp. App. 1 § 1. And the funds will be used for that purpose whether or not the three-judge court grants Appellants’ extension request. The specter of massive releases was always fictional, but now it is foreclosed.

Moreover, Senate Bill 105’s undefined promise of “long-term solutions” confirms that the three-judge court was right to hold Appellants to their constitutional obligations. Senate Bill 105 directs the Governor to “immediately” assess the state’s prison crisis, “in consultation with stakeholders,” to develop necessary measures to reduce overcrowding. *Id.* That, of course, is precisely what this Court ordered Appellants to do in 2011. And it is what the lower court ordered them to do, multiple times, both before and after this Court affirmed the injunction. Only after being denied a stay by this Court and in the face of contempt proceedings did Appellants seem to grasp that the Constitution compels them to reduce overcrowding. Now is certainly not the time to vacate or modify the order; it is time for compliance.

2. Amici offer no other reason to grant plenary review. Their brief largely repeats Appellants’ unpersuasive arguments, including the fatuous notion that the state’s partial compliance through realignment has rendered the overcrowding cap inequitable. And as a matter of simple math, the realignment of some non-violent inmates is not a changed circumstance. The population reduction order this Court affirmed included both the already-diverted individuals and those who remain in the state prison population. *See* Motion to Dismiss or Affirm 35 n.7. And amici do not even grapple with

the highly deferential standard of review this Court must afford the lower court's fact-bound and discretionary decision not to vacate or modify the overcrowding cap. That decision was correct, not an abuse of discretion. Thus, even if this Court had jurisdiction, the decision would not warrant plenary review.

* * *

For the reasons set forth above and in Appellees' motion to dismiss or affirm, this Court should dismiss the appeal or summarily affirm the decisions below.

Respectfully submitted,

DONALD SPECTER
Counsel of Record
STEVEN FAMA
ALISON HARDY
SARA NORMAN
REBEKAH EVENSON
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
(510) 280-2621
dspecter@prisonlaw.com
Counsel for the *Plata*
Appellees

PAUL D. CLEMENT
Counsel of Record
ZACHARY D. TRIPP
MICHAEL H. MCGINLEY
BANCROFT PLLC
1919 M Street NW, Suite 470
Washington, DC 20036
(202) 234-0090
pclement@bancroftpllc.com

MICHAEL W. BIEN
JANE E. KAHN
ERNEST GALVAN
LISA ELLS
AARON J. FISCHER
KRISTA STONE-MANISTA
MARGOT MENDELSON
LORI RIFKIN
ROSEN BIEN GALVAN &
GRUNFELD LLP
315 Montgomery Street
Tenth Floor
San Francisco, CA 94104
(415) 433-6830
Counsel for the *Coleman*
Appellees

September 24, 2013

**SUPPLEMENTAL
APPENDIX**

TABLE OF CONTENTS

S.B. 105, 2013 Reg. Sess. (Cal. 2013).....Supp. App. 1

Supp. App. 1

SENATE BILL NO. 105

CHAPTER 310

An act to amend, repeal, and add Sections 19050.2 and 19050.8 of the Government Code, to amend, repeal, and add Sections 1233.1, 1233.3, 1233.4, 2910, 11191, and 13602 of, to add Section 1233.9 to, and to add and repeal Sections 2915 and 6250.2 of, the Penal Code, and to amend Section 15 of Chapter 42 of the Statutes of 2012, relating to corrections, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 12, 2013. Filed with Secretary of State September 12, 2013.]

* * *

The people of the State of California do enact as follows:

SECTION 1. The additional prison capacity and change to reduce prison population authorized by this act are immediate measures to avoid early release of inmates and allow the state to comply with the federal court order. This act will also provide time to develop additional thoughtful, balanced, and effective long-term solutions with input from the state's local government and justice partners who are still adjusting to the recent criminal justice reforms of realignment. The long-term changes will build upon the transition of lower level offenders to local jurisdiction, the construction of new prison health care facilities, and improvements to existing health care facilities throughout the prison system. The administration shall begin immediately, in consultation with stakeholders, including

Supp. App. 2

appropriate legislative committees, to assess the state prison system, including capacity needs, prison population levels, recidivism rates, and factors affecting crime levels, and to develop recommendations on balanced solutions that are cost effective and protect public safety. Not later than April 1, 2014, the Department of Finance shall submit the administration's interim report to the Legislature, and, not later than January 10, 2015, the Department of Finance shall submit the administration's final report to the Legislature. It is the intent of the Legislature to consider the reports along with the Legislature's independent findings during the annual budget process.

SEC. 2. Section 19050.2 of the Government Code is amended to read:

19050.2. (a) Subject to the approval of the board, the appointing authority may enter into arrangements with personnel agencies in other jurisdictions for the purpose of exchanging services and effecting transfers of employees.

(b) For purposes of this section, and all related rules, the California City Correctional Center in California City is an agency or jurisdiction for the duration of the two-year period described in Section 19050.8.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 3. Section 19050.2 is added to the Government Code, to read:

Supp. App. 3

19050.2. (a) Subject to the approval of the board, the appointing authority may enter into arrangements with personnel agencies in other jurisdictions for the purpose of exchanging services and effecting transfers of employees.

(b) This section shall become operative on January 1, 2017.

SEC. 4. Section 19050.8 of the Government Code is amended to read:

19050.8. The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies for a period not to exceed two years or between jurisdictions for a period not to exceed four years for any of the following purposes:

(a) To provide training to employees.

(b) To enable an agency to obtain expertise needed to meet a compelling program or management need.

(c) To facilitate the return of injured employees to work.

These temporary assignments or loans shall be deemed to be in accord with this part limiting employees to duties consistent with their class and may be used to meet minimum requirements for promotional as well as open examinations. An employee participating in that arrangement shall have the absolute right to return to his or her former position. Any temporary assignment or loan of an employee made for the purpose specified in subdivision (b) shall be made only with the voluntary consent of the employee.

Supp. App. 4

In addition, out-of-class experience obtained in a manner not described in this section may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and was properly verified under standards prescribed by board rule.

For purposes of this section, a temporary assignment or loan between educational agencies or jurisdictions shall be extended for up to two additional years upon a finding by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, and with the approval of the Executive Officer of the State Personnel Board, that the extension is necessary in order to substantially complete work on an educational improvement project. However, the temporary assignment of any local educator who is performing the duties of a nonrepresented classification while on loan to a state educational agency may be extended for as many successive two year intervals as necessary by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges with the concurrence of the educational agency or jurisdiction. Public and private colleges and universities shall be considered educational agencies or jurisdictions within the meaning of this section.

A temporary assignment within an agency or between agencies may be extended by the board for up to two additional years in order for an employee to complete an apprenticeship program.

(d) For the duration of a temporary assignment or loan not to exceed two years, for the purposes of this

Supp. App. 5

section and all related rules, the California City Correctional Center in California City, which provides services equivalent to the core governmental function of incarcerating inmates, shall be considered an agency or jurisdiction.

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 5. Section 19050.8 is added to the Government Code, to read:

19050.8. The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies for a period not to exceed two years or between jurisdictions for a period not to exceed four years for any of the following purposes:

- (a) To provide training to employees.
- (b) To enable an agency to obtain expertise needed to meet a compelling program or management need.
- (c) To facilitate the return of injured employees to work.

These temporary assignments or loans shall be deemed to be in accord with this part limiting employees to duties consistent with their class and may be used to meet minimum requirements for promotional as well as open examinations. An employee participating in that arrangement shall have the absolute right to return to his or her former position. Any temporary assignment or loan of an employee made for the purpose specified in

Supp. App. 6

subdivision (b) shall be made only with the voluntary consent of the employee.

In addition, out-of-class experience obtained in a manner not described in this section may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and was properly verified under standards prescribed by board rule.

For purposes of this section, a temporary assignment or loan between educational agencies or jurisdictions shall be extended for up to two additional years upon a finding by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, and with the approval of the Executive Officer of the State Personnel Board, that the extension is necessary in order to substantially complete work on an educational improvement project. However, the temporary assignment of any local educator who is performing the duties of a nonrepresented classification while on loan to a state educational agency may be extended for as many successive two year intervals as necessary by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges with the concurrence of the educational agency or jurisdiction. Public and private colleges and universities shall be considered educational agencies or jurisdictions within the meaning of this section.

A temporary assignment within an agency or between agencies may be extended by the board for up to two additional years in order for an employee to complete an apprenticeship program.

Supp. App. 7

(d) This section shall become operative on January 1, 2017.

SEC. 6. Section 1233.1 of the Penal Code is amended to read:

1233.1. After the conclusion of each calendar year following the enactment of this section, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate the following for that calendar year:

(a) The cost to the state to incarcerate in prison and supervise on parole an offender who fails local supervision and is sent to prison. This calculation shall take into consideration factors, including, but not limited to, the average length of stay in prison and on parole for offenders subject to local supervision, as well as the associated parole revocation rates, and revocation costs.

(b) (1) The statewide probation failure rate. The statewide probation failure rate shall be calculated as the total number of adult felony probationers statewide sent to prison in the previous year as a percentage of the average statewide adult felony probation population for that year.

(2) The statewide probation failure rate for the 2012 calendar year shall be calculated as the total number of adult felony probationers statewide sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, as a percentage of the average statewide adult felony probation population for that year.

Supp. App. 8

(c) (1) A probation failure rate for each county. Each county's probation failure rate shall be calculated as the number of adult felony probationers sent to prison from that county in the previous year as a percentage of the county's average adult felony probation population for that year.

(2) The probation failure rate for each county for the 2012 calendar year shall be calculated as the total number of adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, from that county as a percentage of the county's average adult felony probation population for that year.

(d) An estimate of the number of adult felony probationers each county successfully prevented from being incarcerated. For each county, this estimate shall be calculated based on the reduction in the county's probation failure rate as calculated annually pursuant to subdivision (c) of this section and the county's baseline probation failure rate as calculated pursuant to Section 1233. In making this estimate, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the period 2006 to 2008, inclusive.

(e) (1) In calculating probation failure rates for the state and individual counties, the number of adult

Supp. App. 9

felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison for conviction of a new crime and who simultaneously have their probation terms terminated.

(2) In calculating probation failure rates for the state and individual counties for the 2012 calendar year, the number of adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, shall include those adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a revocation of probation, as well as adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a conviction of a new crime and who simultaneously have their probation terms terminated.

(f) The statewide mandatory supervision failure to prison rate. The statewide mandatory supervision failure to prison rate shall be calculated as the total number of offenders supervised under mandatory supervision statewide sent to prison in the previous year as a percentage of the average statewide mandatory supervision population for that year.

Supp. App. 10

(g) A mandatory supervision failure to prison rate for each county. Each county's mandatory supervision failure to prison rate shall be calculated as the number of offenders supervised under mandatory supervision sent to prison from that county in the previous year as a percentage of the county's average mandatory supervision population for that year.

(h) The statewide postrelease community supervision failure to prison rate. The statewide postrelease community supervision failure to prison rate shall be calculated as the total number of offenders supervised under postrelease community supervision statewide sent to prison in the previous year as a percentage of the average statewide postrelease community supervision population for that year.

(i) A postrelease community supervision failure to prison rate for each county. Each county's postrelease community supervision failure to prison rate shall be calculated as the number of offenders supervised under postrelease community supervision sent to prison from that county in the previous year as a percentage of the county's average postrelease community supervision population for that year.

(j) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

SEC. 7. Section 1233.1 is added to the Penal Code, to read:

1233.1. After the conclusion of each calendar year, the Director of Finance, in consultation with the

Supp. App. 11

Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate the following for that calendar year:

(a) The cost to the state to incarcerate in a contract facility and supervise on parole an offender who fails local supervision and is sent to prison. This calculation shall take into consideration factors, including, but not limited to, the average length of stay in prison for offenders subject to local supervision and the average length of parole for offenders who failed local supervision and were sent to prison.

(b) Beginning with the 2013 calendar year, the statewide probation failure rate shall be calculated as the total number of adult felony probationers statewide sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, as a percentage of the average statewide adult felony probation population for that year.

(c) Beginning with the 2013 calendar year, the probation failure rate for each county shall be calculated as the total number of adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, from that county, as a percentage of the county's average adult felony probation population for that year.

(d) An estimate of the number of adult felony probationers each county successfully prevented from being incarcerated. For each county, this estimate shall be calculated based on the reduction in the county's probation failure rate as calculated annually

Supp. App. 12

pursuant to subdivision (c) and the county's baseline probation failure rate as calculated pursuant to Section 1233. In making this estimate, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the 2006 to 2008, inclusive, calendar period.

(e) Beginning with the 2013 calendar year, in calculating probation failure rates for the state and individual counties, the number of adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, shall include those adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a revocation of probation, as well as adult felony probationers sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison, or to jail pursuant to paragraph (5) of subdivision (h) of Section 1170, for a conviction of a new crime and who simultaneously have their probation terms terminated.

(f) The statewide mandatory supervision failure to prison rate. The statewide mandatory supervision failure to prison rate shall be calculated as the total

Supp. App. 13

number of offenders supervised under mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, statewide, sent to prison in the previous calendar year as a percentage of the average statewide mandatory supervision population for that year.

(g) A mandatory supervision failure to prison rate for each county. Each county's mandatory supervision failure to prison rate shall be calculated as the number of offenders supervised under mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 sent to prison from that county in the previous calendar year as a percentage of the county's average mandatory supervision population for that year.

(h) The statewide postrelease community supervision failure to prison rate. The statewide postrelease community supervision failure to prison rate shall be calculated as the total number of offenders supervised under postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3, statewide, sent to prison in the previous calendar year as a percentage of the average statewide postrelease community supervision population for that year.

(i) A postrelease community supervision failure to prison rate for each county. Each county's postrelease community supervision failure to prison rate shall be calculated as the number of offenders supervised under postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 sent to prison from that county in the previous calendar year as a percentage of the county's average

Supp. App. 14

postrelease community supervision population for that year.

(j) This section shall become operative on July 1, 2014.

SEC. 8. Section 1233.3 of the Penal Code is amended to read:

1233.3. Annually, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate a probation failure reduction incentive payment for each eligible county, pursuant to Section 1233.2, for the most recently completed calendar year, as follows:

(a) For a county identified as being in Tier 1, as defined in subdivision (a) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 45 percent of the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(b) For a county identified as being in Tier 2, as defined in subdivision (b) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 40 percent of the costs to the state to incarcerate in prison and supervise on parole a

Supp. App. 15

probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(c) For a county identified as being in Tier 3, as defined in subdivision (c) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 30 percent of the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(d) A county that fails to provide information specified in Section 1231 to the Administrative Office of the Courts shall not be eligible for a probation failure reduction incentive payment.

(e) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

SEC. 9. Section 1233.3 is added to the Penal Code, to read:

1233.3. Annually, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate a probation failure reduction incentive payment for each eligible county, pursuant to Section 1233.2, for the most recently completed calendar year, as follows:

Supp. App. 16

(a) For a county identified as being in Tier 1, as defined in subdivision (a) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 45 percent of the state's cost of housing an inmate in a contract facility, and to supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(b) For a county identified as being in Tier 2, as defined in subdivision (b) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 40 percent of the state's cost of housing an inmate in a contract facility, and to supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(c) For a county identified as being in Tier 3, as defined in subdivision (c) of Section 1233.2, its probation failure reduction incentive payment shall equal the estimated number of probationers successfully prevented from being incarcerated, as defined by subdivision (d) of Section 1233.1, multiplied by 30 percent of the state's cost of housing an inmate in a contract facility, and to supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(d) A county that fails to provide information specified in Section 1231 to the Administrative Office

Supp. App. 17

of the Courts is not eligible for a probation failure reduction incentive payment.

(e) This section shall become operative on July 1, 2014.

SEC. 10. Section 1233.4 of the Penal Code is amended to read:

1233.4. (a) It is the intent of the Legislature for counties demonstrating high success rates with adult felony probationers to have access to performance-based funding as provided for in this section.

(b) On an annual basis, the Department of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate 5 percent of the total statewide estimated number of probationers successfully prevented from being incarcerated for counties that successfully reduce the number of adult felony probationers incarcerated multiplied by the costs to the state to incarcerate in prison and supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(c) The amount estimated pursuant to subdivision (b) shall be used to provide high performance grants to county probation departments for the purpose of bolstering evidence-based probation practices designed to reduce recidivism among adult felony probationers.

(d) County probation departments eligible for these high performance grants shall be those with adult probation failure rates more than 50 percent below

Supp. App. 18

the statewide average in the most recently completed calendar year.

(e) A county probation department that qualifies for a probation failure reduction incentive payment, as provided in Section 1233.3, and a high performance grant payment in the same year shall choose to receive either the probation failure incentive payment or the high performance grant payment. The CPO of a county that qualifies for both a high performance grant and a probation failure reduction incentive payment shall indicate to the Administrative Office of the Courts, by a date designated by the Administrative Office of the Courts, whether the CPO chooses to receive the high performance grant or probation failure reduction payment.

(f) The grants provided for in this section shall be administered by the Administrative Office of the Courts. The Administrative Office of the Courts shall seek to ensure that all qualifying probation departments that submit qualifying applications receive a proportionate share of the grant funding available based on the population of adults ages 18 to 25, inclusive, in each of the counties qualifying for the grants.

(g) A county that fails to provide the information specified in Section 1231 to the Administrative Office of the Courts shall not be eligible for a high performance grant payment.

(h) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

Supp. App. 19

SEC. 11. Section 1233.4 is added to the Penal Code, to read:

1233.4. (a) It is the intent of the Legislature for counties demonstrating high success rates with adult felony probationers to have access to performance-based funding as provided for in this section.

(b) On an annual basis, the Department of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate 5 percent of the total statewide estimated number of probationers successfully prevented from being incarcerated for counties that successfully reduce the number of adult felony probationers incarcerated multiplied by the state's cost of housing an inmate in a contract facility, and to supervise on parole a probationer who was sent to prison, as defined in subdivision (a) of Section 1233.1.

(c) The amount estimated pursuant to subdivision (b) shall be used to provide high performance grants to county probation departments for the purpose of bolstering evidence-based probation practices designed to reduce recidivism among adult felony probationers.

(d) County probation departments eligible for these high performance grants shall be those with adult probation failure rates more than 50 percent below the statewide average in the most recently completed calendar year.

(e) A county probation department that qualifies for a probation failure reduction incentive payment, as

Supp. App. 20

provided in Section 1233.3, and a high performance grant payment in the same year shall choose to receive either the probation failure incentive payment or the high performance grant payment. The Chief Probation Officer of a county that qualifies for both a high performance grant and a probation failure reduction incentive payment shall indicate to the Administrative Office of the Courts, by a date designated by the Administrative Office of the Courts, whether the Chief Probation Officer chooses to receive the high performance grant or probation failure reduction payment.

(f) The grants provided for in this section shall be administered by the Administrative Office of the Courts. The Administrative Office of the Courts shall seek to ensure that all qualifying probation departments that submit qualifying applications receive a proportionate share of the grant funding available based on the population of adults 18 to 25 years of age, inclusive, in each of the counties qualifying for the grants.

(g) A county that fails to provide the information specified in Section 1231 to the Administrative Office of the Courts is not eligible for a high performance grant payment.

(h) This section shall become operative on July 1, 2014.

SEC. 12. Section 1233.9 is added to the Penal Code, to read:

1233.9. There is hereby created in the State Treasury the Recidivism Reduction Fund for moneys to be available upon appropriation by the Legislature, for activities designed to reduce the

state's prison population, including, but not limited to, reducing recidivism. Funds available in the Recidivism Reduction Fund may be transferred to the State Community Corrections Performance Incentives Fund.

SEC. 13. Section 2910 of the Penal Code is amended to read:

2910. (a) The Secretary of the Department of Corrections and Rehabilitation may enter into an agreement with a city, county, or city and county to permit transfer of prisoners in the custody of the secretary to a jail or other adult correctional facility of the city, county, or city and county, if the sheriff or corresponding official having jurisdiction over the facility has consented thereto. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to such transferred prisoners.

(b) For purposes of this section, a transfer of prisoners under subdivision (a) may include inmates who have been sentenced to the department but remain housed in a county jail. These prisoners shall be under the sole legal custody and jurisdiction of the sheriff or corresponding official having jurisdiction over the facility and shall not be under the legal custody or jurisdiction of the Department of Corrections and Rehabilitation.

(c) Notwithstanding any other law, for purposes of entering into agreements under subdivision (a), any process, regulation, requirement, including any state governmental reviews or approvals, or third-party approval that is required under, or implemented

Supp. App. 22

pursuant to, any statute that relates to entering into those agreements is hereby waived.

(d) When an agreement entered into pursuant to subdivision (a) or (c) is in effect with respect to a particular local facility, the secretary may transfer prisoners whose terms of imprisonment have been fixed and parole violators to the facility.

(e) Prisoners so transferred to a local facility may, with notice to the secretary, participate in programs of the facility, including, but not limited to, work furlough rehabilitation programs.

(f) The secretary, to the extent possible, shall select city, county, or city and county facilities in areas where medical, food, and other support services are available from nearby existing prison facilities.

(g) The secretary, with the approval of the Department of General Services, may enter into an agreement to lease state property for a period not in excess of 20 years to be used as the site for a facility operated by a city, county, or city and county authorized by this section.

(h) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 14. Section 2910 is added to the Penal Code, to read:

2910. (a) The Secretary of the Department of Corrections and Rehabilitation may enter into an agreement with a city, county, or city and county to permit transfer of prisoners in the custody of the secretary to a jail or other adult correctional facility

Supp. App. 23

of the city, county, or city and county, if the sheriff or corresponding official having jurisdiction over the facility has consented thereto. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to such transferred prisoners.

(b) When an agreement entered into pursuant to subdivision (a) is in effect with respect to a particular local facility, the secretary may transfer prisoners whose terms of imprisonment have been fixed and parole violators to the facility.

(c) Prisoners so transferred to a local facility may, with approval of the secretary, participate in programs of the facility, including, but not limited to, work furlough rehabilitation programs.

(d) Prisoners transferred to such facilities are subject to the rules and regulations of the facility in which they are confined, but remain under the legal custody of the Department of Corrections and Rehabilitation and shall be subject at any time, pursuant to the rules and regulations of the secretary, to be detained in the county jail upon the exercise of a state parole or correctional officer's peace officer powers, as specified in Section 830.5, with the consent of the sheriff or corresponding official having jurisdiction over the facility.

(e) The secretary, to the extent possible, shall select city, county, or city and county facilities in areas where medical, food, and other support services are available from nearby existing prison facilities.

(f) The secretary, with the approval of the Department of General Services, may enter into an agreement to lease state property for a period not in

Supp. App. 24

excess of 20 years to be used as the site for a facility operated by a city, county, or city and county authorized by this section.

(g) An agreement shall not be entered into under this section unless the cost per inmate in the facility is no greater than the average costs of keeping an inmate in a comparable facility of the department, as determined by the secretary.

(h) This section shall become operative on January 1, 2017.

SEC. 15. Section 2915 is added to the Penal Code, to read:

2915. (a) The Secretary of the Department of Corrections and Rehabilitation may enter into one or more agreements to obtain secure housing capacity within the state. These agreements may be entered into with private entities and may be in the form of a lease or an operating agreement. The secretary may procure and enter these agreements on terms and conditions he or she deems necessary and appropriate. Notwithstanding any other law, any process, regulation, requirement, including any state governmental reviews or approvals, or third-party approval that is required under statutes that relate to the procurement and implementation of those agreements is hereby waived, however, no agreement shall contain terms, either directly or indirectly, that involve the repayment of any debt issuance or other financing and, consistent with state law, shall provide that payment of that agreement is subject to appropriation.

(b) The Secretary of the Department of Corrections and Rehabilitation may enter into one or more

Supp. App. 25

agreements to obtain secure housing capacity in another state. These agreements may be entered into with private entities and may be in the form of an operating agreement or other contract. The secretary may procure and enter these agreements on terms and conditions he or she deems necessary and appropriate. Notwithstanding any other law, any process, regulation, requirement, including any state governmental reviews or approvals, or third-party approval that is required under statutes that relate to the procurement and implementation of those agreements is hereby waived, however, no agreement shall contain terms, either directly or indirectly, that involve the repayment of any debt issuance or other financing and, consistent with state law, shall provide that payment of that agreement is subject to appropriation. This subdivision does not authorize the department to operate a facility out of state.

(c) The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code do not apply to this section.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 16. Section 6250.2 is added to the Penal Code, to read:

6250.2. (a) The Secretary of the Department of Corrections and Rehabilitation may enter into agreements for the transfer of prisoners to, or placement of prisoners in, community correctional centers. The secretary may enter into contracts to

provide housing, sustenance, and supervision for inmates placed in community correctional centers.

(b) Notwithstanding any other law, for the purposes of entering into agreements under subdivision (a), any process, regulation, requirement, including any state government reviews or approvals, or third-party approval that is required under, or implemented pursuant to, any statute that relates to entering into those agreements is hereby waived.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 17. Section 11191 of the Penal Code is amended to read:

11191. (a) Any court or other agency or officer of this state having power to commit or transfer an inmate, as defined in Article II (d) of the Interstate Corrections Compact or of the Western Interstate Corrections Compact, to any institution for confinement may commit or transfer that inmate to any institution within or without this state if this state has entered into a contract or contracts for the confinement of inmates in that institution pursuant to Article III of the Interstate Corrections Compact or of the Western Interstate Corrections Compact.

(b) An inmate sentenced under California law shall not be committed or transferred to an institution outside of this state, unless he or she has executed a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his choice, or with a public defender if the inmate cannot afford counsel, concerning his rights

Supp. App. 27

and obligations under this section, and shall be informed of those rights prior to executing the written consent. At any time more than five years after the transfer, the inmate shall be entitled to revoke his consent and to transfer to an institution in this state. In such cases, the transfer shall occur within the next 30 days.

(c) Notwithstanding the requirements in this section or Section 11194, the secretary may transfer an inmate to a facility in another state without the consent of the inmate.

(d) Inmates who volunteer by submitting a request to transfer and are otherwise eligible shall receive first priority under this section.

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 18. Section 11191 is added to the Penal Code, to read:

11191. (a) Any court or other agency or officer of this state having power to commit or transfer an inmate, as defined in Article II(d) of the Interstate Corrections Compact or of the Western Interstate Corrections Compact, to any institution for confinement may commit or transfer that inmate to any institution within or outside of this state if this state has entered into a contract or contracts for the confinement of inmates in that institution pursuant to Article III of the Interstate Corrections Compact or of the Western Interstate Corrections Compact.

(b) No inmate sentenced under California law may be committed or transferred to an institution outside of this state, unless he or she has executed a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his choice, or with a public defender if the inmate cannot afford counsel, concerning his rights and obligations under this section, and shall be informed of those rights prior to executing the written consent. At any time more than five years after the transfer, the inmate shall be entitled to revoke his consent and to transfer to an institution in this state. In such cases, the transfer shall occur within the next 30 days.

(c) This section shall become operative on January 1, 2017.

SEC. 19. Section 13602 of the Penal Code is amended to read:

13602. (a) The Department of Corrections and Rehabilitation may use the training academy at Galt or the training center in Stockton. The academy at Galt shall be known as the Richard A. McGee Academy. The training divisions, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for providing training and support to correctional peace officers while being trained by the department.

(b) Notwithstanding subdivision (a), and pursuant to Section 13602.1, the Department of Corrections and Rehabilitation may use a training academy established for the California City Correctional Center. This academy, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for

Supp. App. 29

providing training and support to correctional employees who are being trained by the department.

(c) Each new cadet who attends an academy shall complete the course of training, pursuant to standards approved by the CPOST before he or she may be assigned to a post or job as a peace officer. Every newly appointed first-line or second-line supervisor in the Department of Corrections and Rehabilitation shall complete the course of training, pursuant to standards approved by the CPOST for that position.

(d) The Department of Corrections and Rehabilitation shall make every effort to provide training prior to commencement of supervisory duties. If this training is not completed within six months of appointment to that position, any first-line or second-line supervisor shall not perform supervisory duties until the training is completed.

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 20. Section 13602 is added to the Penal Code, to read:

13602. (a) The Department of Corrections and Rehabilitation may use the training academy at Galt or the training center in Stockton. The academy at Galt shall be known as the Richard A. McGee Academy. The training divisions, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for providing training and support to correctional peace officers while being trained by the department.

Supp. App. 30

(b) Each new cadet who attends an academy shall complete the course of training, pursuant to standards approved by the CPOST, before he or she may be assigned to a post or job as a peace officer. Every newly appointed first-line or second-line supervisor in the Department of Corrections and Rehabilitation shall complete the course of training, pursuant to standards approved by the CPOST for that position.

(c) The Department of Corrections and Rehabilitation shall make every effort to provide training prior to commencement of supervisory duties. If this training is not completed within six months of appointment to that position, any first-line or second-line supervisor shall not perform supervisory duties until the training is completed.

(d) This section shall become operative January 1, 2017.

SEC. 21. Section 15 of Chapter 42 of the Statutes of 2012 is amended to read:

Sec. 15. (a) The Department of Corrections and Rehabilitation shall remove all inmates from, cease operations of, and close the California Rehabilitation Center located in Norco, California, no later than either December 31, 2016, or six months after construction of the three Level II dorm facilities authorized in Section 14 of this act, whichever is earlier.

(b) The requirement in subdivision (a) is hereby suspended pending a review by the Department of Finance and the Department of Corrections and Rehabilitation that determines the facility can be closed. Closure of the facility shall not occur sooner

than 30 days after notification in writing to the Chair of the Joint Legislative Budget Committee.

SEC. 22. (a) There is hereby appropriated from the General Fund the amount of three hundred fifteen million dollars (\$315,000,000) to the Department of Corrections and Rehabilitation for purposes of implementing this act. The amount appropriated is based on federal court orders in the Three Judge Court proceedings (2:90-cv-00520 LKK JFM P, C01-1351 TEH) requiring that the department achieve a population of 137.5 percent of design capacity no later than December 31, 2013. If the department no longer needs to meet this percentage or is not required to meet this percentage within the 2013–14 fiscal year, then the department shall reduce its use of this appropriation accordingly. The department shall spend these funds on immediate capacity to meet the federal court orders issued in the Three Judge Court proceedings (2:90-cv-00520 LKK JFM P, C01-1351 TEH) only to the extent needed to avoid early release. Except as provided by subdivision (c), any amounts which are not encumbered by June 30, 2014, are to be transferred to the Recidivism Reduction Fund.

(b) To the extent the Three Judge Court referenced in subdivision (a) issues an order or orders subsequent to the enactment of this act, which eliminates the need to obtain the full amount of capacity authorized by this act, or adjusts the date by which that capacity is required, the Department of Finance shall report on the activities and prepare and submit a fiscal estimate necessary to meet the revised order or orders, to the Joint Legislative

Budget Committee and appropriate fiscal committees, within 15 days of the issuance of the new order or orders.

(c) To the extent the fiscal estimate necessary to meet the revised order or orders issued in the Three Judge Court proceedings (2:90-cv-00520 LKK JFM P, C01-1351 TEH) is less than the three hundred fifteen million dollars (\$315,000,000) appropriated in this section then, within 45 days of the order or orders, the Director of Finance shall direct the Controller to transfer the first seventy-five million dollars (\$75,000,000) of those savings, as determined in subdivision (b) to the Recidivism Reduction Fund. Any additional savings shall be allocated as follows: 50 percent shall revert to the General Fund and 50 percent shall be transferred to the Recidivism Reduction Fund.

(d) (1) Not later than April 1, 2014, and again not later than April 1, 2015, the Secretary of the Department of Corrections and Rehabilitation shall submit a report to the Director of Finance and the chairpersons and vice chairpersons of the committees in both houses of the Legislature that consider the state budget, and to the Assembly Committee on Public Safety and the Senate Committee on Public Safety, detailing the number of inmates housed in leased beds and in contracted beds both within and outside of the state pursuant to the provisions of this act. The report shall provide the specific number of inmates moved to each facility and shall identify all costs associated with housing these inmates.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on

Supp. App. 33

January 1, 2017, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 23. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.