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# Chapter 837: Inmate Medical Release Under Realignment

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## Chapter 837: Inmate Medical Release Under Realignment

*Cameron Easterling*

### *Code Sections Affected*

Government Code §§ 26605.6, 26605.7, 26605.8 (new).  
SB 1462 (Leno); 2012 STAT. Ch. 837.

### I. INTRODUCTION

*Were we to enter the hidden world of punishment, we should be startled by what we see. . . . While economic costs, defined in simple dollar terms, are secondary to human costs, they do illustrate the scale of the criminal justice system.*

—Justice Anthony M. Kennedy<sup>1</sup>

Supreme Court Associate Justice Anthony Kennedy’s remarks to the American Bar Association in 2003 reveal the fiscal consequences of incarceration in California.<sup>2</sup> As of mid-2012, California housed over 147,000 inmates at a cost of \$47,102 each.<sup>3</sup> In May 2011, Justice Kennedy, writing for the United States Supreme Court, ordered California to cure the unconstitutional overcrowding in its prison system.<sup>4</sup> This, in part, led California to initiate realignment—an overhaul of its penal system.<sup>5</sup> With California currently in a budget crisis,<sup>6</sup> the legislature has acted to ensure California can comply with the Supreme Court’s order.<sup>7</sup>

To help meet the order, California has increased the capacity of local county jails.<sup>8</sup> Yet, despite additional funding to implement these changes, jails are still

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1. Anthony M. Kennedy, Assoc. J., U.S. Sup. Ct., Speech Before the American Bar Association Annual Meeting (Aug. 9, 2003).

2. *Brown v. Plata*, 131 S. Ct. 1910 (2011) (ordering California to reduce its prison population to alleviate unconstitutional overcrowding); *California Budget Crisis*, L.A. TIMES (May 14, 2012), [http://topics.nytimes.com/topics/news/national/usstatesterritoriesandpossessions/california/budget\\_crisis\\_2008\\_09/index.html](http://topics.nytimes.com/topics/news/national/usstatesterritoriesandpossessions/california/budget_crisis_2008_09/index.html) (on file with the *McGeorge Law Review*).

3. CAL. LEG. ANALYST’S OFF., HOW MUCH DOES IT COST TO INCARCERATE AN INMATE (2012), available at [http://www.lao.ca.gov/laoapp/laomenus/sections/crim\\_justice/6\\_cj\\_inmatecost.aspx?catid=3](http://www.lao.ca.gov/laoapp/laomenus/sections/crim_justice/6_cj_inmatecost.aspx?catid=3) (on file with the *McGeorge Law Review*).

4. *Plata*, 131 S. Ct. 1910.

5. CAL. DEP’T OF CORR. & REHAB., REALIGNMENT FACT SHEET (2012), available at <http://www.cdcr.ca.gov/realignment/docs/Realignment-Fact-Sheet.pdf> (on file with the *McGeorge Law Review*); see also Steven Thomas Fazzi, Comment, *A Primer on the 2011 Corrections Realignment: Why California Placed Felons Under County Control*, 44 MCGEORGE L. REV. 423 (2013) (providing a comprehensive overview of realignment legislation).

6. *California Budget Crisis*, *supra* note 2.

7. REALIGNMENT FACT SHEET, *supra* note 5.

8. *Id.*

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under fiscal pressure due to the budget crisis.<sup>9</sup> Chapter 837 offers county jails a tool, already used by state prisons, to ease their financial burden under realignment by releasing inmates who are deathly ill.<sup>10</sup>

## II. LEGAL BACKGROUND

In *Brown v. Plata*, the Supreme Court of the United States held that California's prison system was overcrowded, and in turn, its healthcare system so inadequate that it violated the United States Constitution's Eighth Amendment protections against cruel and unusual punishment;<sup>11</sup> to remedy this violation, the Court mandated that the state must reduce its state-prison population.<sup>12</sup> The result, in part, was "realignment," a series of laws passed to decrease California's prison population to 137.5 percent design capacity, as the Court ordered in *Plata*.<sup>13</sup> In response, the legislature has created laws aimed at easing implementation and funding of realignment, including Chapter 837.<sup>14</sup>

In 2010, the California Legislature passed the predecessor to Chapter 837, SB 1399, also known as the Prison Medical Parole Law.<sup>15</sup> Under this law, the California Department of Corrections and Rehabilitation (CDCR)<sup>16</sup> and the Board of Parole Hearings (BPH)<sup>17</sup> may grant parole to any state prisoner in custody who "is permanently medically incapacitated[,] . . . requir[es] 24-hour care, and . . . would not reasonably pose a threat to public safety."<sup>18</sup> Under the law there are multiple levels of review to determine if a parolee can be released.<sup>19</sup> First, a primary care provider must identify to the head prison physician potential parolees who the primary care provider believes meet the medical requirements for release.<sup>20</sup> Next, if the head physician agrees with the primary care provider's

9. *Id.*

10. CAL. GOV'T CODE § 26605.6 (enacted by Chapter 837).

11. U.S. CONST. amend. VIII.

12. *Brown v. Plata*, 131 S. Ct. 1910, 1947 (2011).

13. REALIGNMENT FACT SHEET, *supra* note 5. For more information, see *Realignment*, CAL. DEP'T OF CORR. & REHAB., <http://www.cdcr.ca.gov/realignment/> (last visited Apr. 1, 2013) (on file with the *McGeorge Law Review*); Fazzi, *supra* note 5.

14. See *Funding Realignment*, CAL. DEP'T OF CORR. & REHAB., <http://www.cdcr.ca.gov/realignment/Funding-Realignment.html> (last visited Apr. 24, 2013) (on file with the *McGeorge Law Review*) (AB 111, AB 94, AB 118, SB 89, and SB 87 were intended to secure funding for realignment.).

15. CAL. PENAL CODE § 3550 (West 2011).

16. The CDCR is in charge of running the prison and parole systems throughout California. CAL. DEP'T OF CORR. & REHAB., STRATEGIC PLAN (2010), available at [http://www.cdcr.ca.gov/About\\_CDCR/docs/Strategic\\_Plan\\_2010-2015.pdf](http://www.cdcr.ca.gov/About_CDCR/docs/Strategic_Plan_2010-2015.pdf) [hereinafter STRATEGIC PLAN (2010)] (on file with the *McGeorge Law Review*).

17. The Board of Parole Hearings is a division of the CDCR that conducts parole hearings and accompanying investigations on parolees. PENAL § 3550; STRATEGIC PLAN (2010), *supra* note 16.

18. PENAL § 3550(a).

19. *Id.* § 3550(c)-(h).

20. *Id.* § 3550(c). Alternatively, a prisoner, his or her family member, or a representative may request that the head physician make a parole-eligibility determination. *Id.*

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assessment, “he or she shall refer the matter to the [BPH].”<sup>21</sup> A BPH panel then reviews the prison physician’s report on each potential parolee’s condition and likelihood of recovery and decides whether the inmate qualifies for release.<sup>22</sup> However, after release, if the BPH finds that the parolee’s condition has improved, it can return the parolee to prison.<sup>23</sup>

Additionally, where a prisoner has less than six months to live, is “permanently medically incapacitated . . . requiring 24-hour total care,” and whose release would not jeopardize public safety, the Secretary of the CDCR may recommend to the sentencing court that the prisoner’s sentence be recalled; the court may then recall the sentence.<sup>24</sup> Finally, existing law allows the transfer of prison or jail inmates to hospitals or other state facilities for medical treatment.<sup>25</sup>

### III. CHAPTER 837

Chapter 837 authorizes California sheriffs to release jail inmates who are “deemed to have a life expectancy of 6 months or less” and who “would not reasonably pose a threat to public safety.”<sup>26</sup> Before releasing a terminally ill inmate, a sheriff must first consult a physician in charge of medical care at the jail and notify the judge presiding over that district’s superior court.<sup>27</sup> Chapter 837 also allows for a medical probation period, based on similar medical and safety requirements.<sup>28</sup> During this probation period, a state-appointed physician may reexamine the inmate; if the inmate “no longer qualifies for medical probation,” the court can return him or her to county custody.<sup>29</sup>

Under Chapter 837, sheriffs will consult the applicable agencies to help “secure a placement option for the prisoner in the community and . . . examine the prisoner’s eligibility for” medical benefits, like Medicaid, that would support the costs of medical treatment.<sup>30</sup> If a released inmate or an inmate on probation is eligible for medical financial aid via Medi-Cal, the law provides that the county

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21. *Id.*

22. *Id.* § 3550(g).

23. *Id.*

24. *Id.* § 1170(e)(1)–(2)(C) (West Supp. 2012); *see also* *Martinez v. Bd. of Parole Hearings*, 183 Cal. App. 4th 578, 582, 107 Cal. Rptr. 3d 439, 443 (3d Dist. 2010) (The threat to public safety determination done by the BPH and CDCR is held to a highly differential standard and simply must be an “individualized consideration of the specified criteria [that] is not arbitrary and capricious.”).

25. PENAL § 4007; CAL. CODE REGS. tit. 15, §§ 1208–09 (2012).

26. CAL. GOV’T CODE § 26605.6(a) (enacted by Chapter 837).

27. *Id.* § 26605.6(b) (enacted by Chapter 837) (The notification must include: (1) the inmate’s name, (2) the inmate’s commitment offense, including any pending charges, (3) the physician’s report on the inmate’s medical condition and likelihood of recovery, and (4) the inmate’s post-release residence.).

28. *Id.* § 26605.7(a) (enacted by Chapter 837).

29. *Id.* § 26605.7(c) (enacted by Chapter 837).

30. *Id.* §§ 26605.6(c), 26605.7(b) (enacted by Chapter 837).

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must pay for the costs of such aid not covered by federal funding.<sup>31</sup> However, if the inmate's own assets and income are sufficient to provide for his or her own care or the inmate is released from probation, the county is not required to provide medical financial aid.<sup>32</sup>

### IV. ANALYSIS

Chapter 837 is an extension of the Prison Medical Parole Law allowing medical release and parole for state prisoners and offers county jails similar tools for similar reasons.<sup>33</sup> Analysis of Chapter 837 reveals potential savings for the state, which would ease the implementation of realignment; however, there may also be potential costs to society as well.<sup>34</sup>

#### A. Purpose of Chapter 837

The legislature enacted Chapter 837 to address the financial aspects of realignment legislation.<sup>35</sup> As part of this realignment package, the purpose of the original Prison Medical Parole Law was primarily to save the state money.<sup>36</sup> Instead of spending state funds on guarding and caring for inmate patients who may be incapacitated, the CDCR can now release these prisoners on parole, many of whom will likely be housed in nursing homes.<sup>37</sup> Chapter 837 eliminates the costs of guarding inmate patients who are bed-ridden at nursing homes by shifting the medical costs from the state government to entitlement plans, which are funded in part by the federal government.<sup>38</sup> According to Senator Leno, who introduced the law, Chapter 837 extends these goals of the Prison Medical Parole Law to the county jails.<sup>39</sup> Again, this is particularly important under realignment legislation because many inmates now serve long-term sentences at county jails,

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31. *Id.* §§ 26605.6(d), 26605.7(d) (enacted by Chapter 837).

32. *Id.* §§ 26605.6(d), 26605.7(d) (enacted by Chapter 837).

33. Katharine Mieszowski, *Medical Probation Bill Would Release Some Inmates Early*, BAY CITIZEN (June 11, 2012), <http://www.baycitizen.org/health/story/jail-inmates-medical-probation-bill/> (on file with the *McGeorge Law Review*).

34. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 1462, at 2, 10 (July 3, 2012).

35. *See id.* at 5–6 (noting that Chapter 837 will alleviate the financial burden of the “small number of high-cost inmates sentenced to extended periods in county jail”) (quoting the bill’s author, Senator Leno).

36. Katharine Mieszowski, *When the Nursing Home Resident in the Next Room Is a Convicted Criminal*, N.Y. TIMES, Jan. 19, 2012, at A21A, available at <http://www.nytimes.com/2012/01/20/us/prisoners-on-medical-parole-housed-in-california-nursing-homes.html?pagewanted=all> (on file with the *McGeorge Law Review*).

37. *Id.*

38. *Id.*

39. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1462, at 7 (June 26, 2012) (“[Chapter 837] provides sheriffs with an additional tool to . . . manage the high costs of their medically incapacitated inmate population by extending to county jail facilities a similar authority to compassionate release and medical parole that is currently granted to the California Department of Corrections and Rehabilitation (CDCR).”).

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increasing the chances an inmate with a costly illness or disability could exhaust jail funding.<sup>40</sup>

*B. Potential Economic Impacts*

Current estimates show that Chapter 837 could save millions of dollars for county jails throughout California, thereby easing the implementation of California's realignment legislation.<sup>41</sup> The cost to support the released inmates and their medical needs would likely shift to Medi-Cal, and is estimated at \$3 million.<sup>42</sup> However, Medi-Cal is funded by the state and the federal government.<sup>43</sup> This federal funding could potentially cut California's cost of supporting medical parolees released under Chapter 837 to \$1.5 million.<sup>44</sup>

*C. Potential Safety Concerns*

Despite these savings to the state, critics<sup>45</sup> of Chapter 837 feel that budget shortfalls do not justify releasing convicted criminals.<sup>46</sup> In fact, upon examination of the implementation of the Prison Medical Parole Law, the reality of these public safety concerns becomes readily apparent.<sup>47</sup> Like those inmates released under the Prison Medical Parole Law, convicted violent criminals released under Chapter 837 will likely be housed in post-release care facilities, alongside elderly patients, with potentially little security to watch over them.<sup>48</sup>

Chapter 837 addresses these issues by only allowing inmates to be released who physicians deem deathly ill and who sheriffs themselves think pose no threat to public safety.<sup>49</sup> Yet, according to the California District Attorneys Association, these controls may not be enough under the political and financial pressure of realignment.<sup>50</sup> They claim the implementation of Chapter 837 could create

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40. *Id.* at 8.

41. See ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 1462, at 2 (July 3, 2012) (according to the Senate Appropriations Committee, the savings in the Los Angeles County Jail for ten potentially eligible inmates would be \$7.3 million, an exemplar of potential savings statewide).

42. See SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 1462, at 3 (May 24, 2012) (predicting that the Medi-Cal costs would be split evenly between the federal government and the state General Fund).

43. *Id.*

44. *Id.*

45. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 1462, at 10 (July 3, 2012) (opponents include the California District Attorneys Association and victims' rights organizations).

46. *Id.* at 7. According to the California District Attorneys Association, "at some point, there have to be consequences for criminality." *Id.*

47. Mieszowski, *When the Nursing Home Resident in the Next Room Is a Convicted Criminal*, *supra* note 36.

48. *Id.*

49. CAL. GOV'T CODE § 26605.6 (enacted by Chapter 837).

50. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1462, at 10 (June 26,

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conflicts of interest and lead to unquestioned releases of inmates to save the state money.<sup>51</sup> They base their claim on the fact that the state pays the decision-making physicians and sheriffs, which makes them “beholden” to the state’s realignment policies.<sup>52</sup>

Such individuals could potentially release inmates based on political pressure to save the state money and to aid realignment.<sup>53</sup> While this is theoretically possible, current estimates for releases under Chapter 837 are not abnormally high, and do not reveal any such conflicts between safety and fiscal goals.<sup>54</sup> Furthermore, medical release programs in other states show that the amount of inmates medically released is minimal, revealing no pattern of inherent abuse.<sup>55</sup>

## V. CONCLUSION

California is in a budget crisis and is working hard to comply with the Supreme Court’s *Plata* order.<sup>56</sup> While new realignment legislation may help, it puts financial pressure on county jails.<sup>57</sup> Chapter 837 offers county jails a tool, already used by state prisons, to ease their financial burden by releasing inmates who are deathly ill.<sup>58</sup> While Chapter 837 will shift expenditures and likely save the state money, there are also safety concerns.<sup>59</sup> Overall, Chapter 837 is merely one part of the overall package that the state is implementing to address the challenges that California’s linked budget and public safety systems face as a result of realignment.<sup>60</sup>

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2012).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Nicole M. Murphy, *Dying to Be Free: An Analysis of Wisconsin’s Restructured Compassionate Release Statute*, 95 MARQ. L. REV. 1679, 1717 (2012) (noting that, over a twenty-one month period, only eight inmates were released under the amended Wisconsin statute); John A. Beck, *Compassionate Release from New York State Prisons: Why Are So Few Getting Out?*, 27 J.L. MED. & ETHICS 216, 217 (1999) (showing a total of 193 medical parole releases from 1993 to 1998).

56. *See supra* text accompanying notes 4–14; *see also* *Brown v. Plata*, 131 S. Ct. 1910, 1947 (2011) (ordering prison population reduction in California).

57. *See supra* text accompanying notes 12, 33–37 (discussing realignment and economic challenges California faces).

58. *See supra* text accompanying notes 33–40 (discussing the purpose of Chapter 837).

59. *See supra* text accompanying notes 41–55 (discussing likely impacts).

60. *See supra* text accompanying notes 1–9, 33 (discussing realignment as an impetus for Chapter 837).