
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2197 **Hearing Date:** May 15, 2018
Author: Bigelow
Version: February 12, 2018
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Custodial Officers*

HISTORY

Source: Madera County Department of Corrections

Prior Legislation: SB 1406 (Wolk), Ch. 53, Stats. 2014
SB 1019 (Vasconcellos), Ch. 635, Stats. 1999
SB 1695 (Beall), Ch. 575, Stats. 2010

Support: Madera County Board of Supervisors

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to permit custodial officers employed by the Madera County Department of Corrections (DOC) to perform additional duties.

Existing law states that all cities and counties are authorized to employ custodial officers (public officers who are not peace officers) for the purpose of maintaining order in local detention facilities. (Pen. Code, § 831.)

Existing law provides in counties with a population of 425,000 or less – and San Diego, Fresno, Kern, Riverside, and Stanislaus counties – “enhanced powers” custodial officers may be employed. Santa Clara County and Napa County are also included in this section with specified authority for custodial officers who are employed by the Santa Clara County and Napa County DOC. These custodial officers are public officers, not peace officers. (Pen. Code, § 831.5 subds. (a) (g) & (h)(1).)

Existing law provides enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties. (Penal Code § 831.5(b).) This section does not authorize a custodial officer to carry or possess a firearm when the officer is not on duty. (Pen. Code, § 831.5 subd. (i).)

Existing law provides enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility, and, as with regular custodial officers, they may use reasonable force to establish and maintain custody, and may release from custody

misdemeanants on citation to appear or individuals arrested for intoxication who are not subject to further criminal proceedings. And, these custodial officers are allowed to make warrantless arrests within the facility pursuant to Section 836.5 (misdemeanor in the presence of the officer). (Pen. Code, § 831.5 subds. (a) & (f).)

Existing law requires that every enhanced powers custodial officer complete the training course described in Pen. Code, § 832 (introductory course of training prescribed by the Commission on Peace Officer Standards and Training). (Pen. Code, § 831.5 subd. (c).)

Existing law requires a peace officer to be present in a supervisory capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5 subd. (d).)

Existing law provides that custodial officers employed by the Santa Clara County and Napa County DOC are authorized to perform the following additional duties in the facility: (Pen. Code, § 831.5 subds. (g) & (h).)

- Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;
- Search property, cells, prisoners, or visitors;
- Conduct strip or body cavity searches of prisoners as specified;
- Conduct searches and seizures pursuant to a duly issued warrant;
- Segregate prisoners; and,
- Classify prisoners for the purpose of housing or participation in supervised activities.

Existing law states that it is the intent of the Legislature, as it relates to Santa Clara and Napa Counties, to enumerate specific duties of custodial officers and to clarify the relationship of correctional officers and deputy sheriffs in Santa Clara County. And, that it is the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process. The language is, additionally, clear that it should not be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs or to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs. (Pen. Code, § 831.5 subd. (j).)

This bill authorizes, upon a resolution by the Madera County Board of Supervisors, custodial officers employed by the Madera County DOC to perform additional duties in any detention facility located in that county.

This bill provides that custodial officers employed by Napa County DOC are authorized to perform the following additional duties in the facility:

- Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;
- Search property, cells, prisoners, or visitors;
- Conduct strip or body cavity searches of prisoners as specified;
- Conduct searches and seizures pursuant to a duly issued warrant;

- Segregate prisoners; and,
- Classify prisoners for the purpose of housing or participation in supervised activities.

This bill states that Madera County custodial officers are not authorized to perform any law enforcement activities involving any person other than an inmate or his or her visitors in a Madera County detention facility.

This bill provides that it is the intent of the Legislature to enumerate the specific duties of Madera County correctional officers, and to clarify the relationship between correctional officers and deputy sheriffs in Madera County.

COMMENTS

1. Need for This Bill

According to the author:

Currently, employees of the Madera Department of Corrections are public safety officers. These officers have a more limited scope than Peace Officers, and this measure would provide them the ability to perform arrests, conduct searches, and segregate and classify prisoners with the passing of a Resolution by the Madera BOS.

This measure is an important district bill that will ensure residents of Madera County are provided with the utmost public safety protections.

2. Similarities between Santa Clara, Napa and Madera Counties:

On June 6, 1988, Santa Clara transferred control of its jails from the sheriff to the county DOC. In 1999, Santa Clara was given the ability to utilize enhanced power custodial officers. Santa Clara sought legislative intervention due to years of confusion and litigation regarding the status of the county's custodial officers:

The California Supreme Court decided a dispute which arose in Santa Clara County regarding the power of the Santa Clara County Director of Corrections to confer limited peace officer status on some deputies when staffing fell below limits required by law. The Supreme Court held that "[t]he Legislature has made clear its intention to retain the exclusive power to bestow peace officer status on state, county and city employees. Since that chapter [Chapter 4.5 of the Penal Code, sections 830 et seq.] does not authorize the director of a county jail facility to designate custodial officers as peace officers, the director's action cannot be sustained." *County of Santa Clara v. Deputy Sheriffs' Association of Santa Clara County*, (1992) 3 Cal. 4th 873, 886. Santa Clara County found itself in this situation after the voters changed the county charter in 1988 to transfer control of the jails out of the jurisdiction of the sheriff and instead to the County Department of Corrections. *Id.* at p. 876. The lawful way for Santa Clara County custodial officers to gain peace officer powers not currently granted them by state law

requires enacting another state law. (Assembly Committee on Public Safety Analysis, SB 1019 (Vasconcellos), Chapter 635, Statutes of 1999)

Like Santa Clara, the Napa County DOC was separated from the Sheriff's Department by the Board of Supervisors in 1975. They were the first in the state of California to become a civilian-run facility, and are currently one of two in the state not operated by the Sheriff's Department. While Napa County has a population less than 425,000, the county is not able to utilize enhanced powers custodial officers because the penal code requires that the custodial officers be employed by a law enforcement agency. (*See generally* Pen. Code, § 831.5.)

Madera County like Napa and Santa Clara Counties is one of the few counties in California in which the county jail is operated by the county DOC and not the County Sheriff. The DOC is made up of correctional officers who are public officers and not peace officers. In order to maintain order and operate the Madera County detention facility the correctional officers employed there need to perform specific custodial functions, and this bill would give them that ability. This bill would also clarify that Madera County custodial officers are not authorized to perform any law enforcement activities involving any person other than an inmate or his or her visitors in a Madera County detention facility.

3. Argument in Support

According to the *Madera County Board of Supervisors*:

The County of Madera, as well as other counties such as Napa, have the authority and responsibility of maintaining custody of prisoners and performing tasks related to the operation of a local detention facility making our needs specific and unique. AB 2197 will allow Madera Counties DOC Custodial Officers to perform needed arrests, conduct searches and segregate inmates as appropriate. This long needed change will put are custodial officers in a position to best provide critical public safety services for residents of Madera County.

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