
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1327 **Hearing Date:** April 12, 2016
Author: Nguyen
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Urgency: Yes **Fiscal:** Yes
Consultant: AA

Subject: *Criminal Justice Reinvestment Assessment Grant Program of 2016*

HISTORY

Source: Author

Prior Legislation: SB 753 (Nielsen) – 2015, died in Senate Appropriations
SB 1097 (Nielsen) – 2014, died in Senate Appropriations

Support: California District Attorneys Association

Opposition: None known

PURPOSE

The purpose of this bill is to establish funding and a framework, established through the Board of State and Community Corrections, for collecting and compiling data concerning criminal offenders who were “realigned” pursuant to AB 109 in 2011, as specified.

Under current law, "crimes and public offenses" include felonies, misdemeanors, and infractions. (Penal Code § 16). Under current law, a felony is a crime punishable by death, by imprisonment in state prison, or by imprisonment in county jail, as specified. (See Penal Code §§ 190 et seq.; 1170); every other crime or public offense is a misdemeanor "except those offenses that are classified as infractions." (Penal Code § 17(a).)

Current law provides that the Attorney General is the head of the Department of Justice (“DOJ”). (Government Code § 12510.)

Current law requires DOJ “present to the Governor, on or before July 1st, an annual report containing the criminal statistics of the preceding calendar year and to present at other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be prepared to enable the Attorney General to send a copy to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment.” (Penal Code § 13010(g).)

Current law requires this report to contain statistics showing all of the following:

- (a) The amount and the types of offenses known to the public authorities;
- (b) The personal and social characteristics of criminals and delinquents;
- (c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents;
- (d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court; and
- (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the DOJ to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned. (Penal Code § 13012.)

Current law establishes the "Board of State and Community Corrections" ("BSCC"), with the following mission:

The mission of the board shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Penal Code § 6024(b).)

Current law enumerates the duties of the BSCC, including the following with respect to data collection and analysis:

- "Collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. "The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions;"

- Develop recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state;
- Identify, promote, and provide technical assistance relating to evidence-based programs, practices, and promising and innovative projects consistent with the mission of the board;
- Develop definitions of key terms, including, but not limited to, “recidivism,” “average daily population,” “treatment program completion rates,” and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices, and evidence-based programs, as specified;
- Cooperate with and render technical assistance to the Legislature, state agencies, units of general local government, combinations of those units, or other public or private agencies, organizations, or institutions in matters relating to criminal justice and delinquency prevention;
- Conduct evaluation studies of the programs and activities assisted by the federal acts;
- Identify and evaluate state, local, and federal gang and youth violence suppression, intervention, and prevention programs and strategies, along with funding for those efforts, as specified;
- Collect county realignment plans, as specified, and analyze and report on “available data regarding the implementation of the local plans and other outcome-based measures,” as specified; and,
- Support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of realignment, specifically related to dispositions for felony offenders and postrelease community supervision, including making any data collected in this regard available on the BSCC Web site, as specified. (Penal Code § 6027(a) and (b).)

Current law additionally authorizes the BSCC to:

- Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; and
- Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Penal Code § 6027(c).)

This bill would establish the “Criminal Justice Reinvestment Assessment Grant Program of 2016” (“Program”), with specified purposes, requirements and features described below.

Administration and Purpose

This bill would require that the program be administered by BSCC.

This bill would provide that the purpose of the program is to establish and implement “reporting systems to identify and expand programs that provide proven, evidence-based, local programming opportunities for the successful reintegration of offenders into society.”

This bill would require BSCC to “award grants to assist counties with the creation or expansion of infrastructure that allows each county to consistently collect and report criminal justice information” enumerated by this bill.

Local Information Collection and Reporting Requirements

This bill would require that, on or before June 1, 2016, each local community corrections partnership¹ shall report to BSCC on the county's capacity to collect and report the data required by this bill, as enumerated below.

This bill would require that this report "include a local plan that identifies the additional resources necessary for that county to consistently collect and report criminal justice information" required by this bill.

BSCC Review and Granting Authority

This bill would require BSCC to review each county's capacity assessment, and "prioritize and award grants" pursuant to the standards described below.

This bill would require BSCC to "establish minimum standards, funding schedules, and procedures for awarding grants, which shall take into consideration, but not be limited to, all of the following:

- (a) Size of the county.
- (b) Demonstrated efforts to report data prior to January 1, 2017.
- (c) Demonstrated ability to report data prior to January 1, 2017."

This bill would require BSCC to "give preference to counties that have demonstrated efforts to independently collect data on a countywide basis."

This bill would require that funding "shall be used to supplement, rather than supplant, existing programs. Grant funds shall be used for programs that are identified in the local plan"

BSCC Reporting

This bill would require BSCC to "submit to the Legislature on or before June 15, 2017, a report detailing the estimated need, cost, and schedule for each county to consistently collect and report criminal justice information as required by (this bill) "

This bill would require BSCC to compile the local reports of the data specified below concerning persons convicted of jail felonies and, by May 15, 2017, and by May 15 of each year thereafter, make a report to the Governor and the Legislature that summarizes the data reported by the counties.

This bill would require BSCC to compile the local reports of the data specified below concerning persons released from prison and subject to Post release Community Supervision and, by May 15, 2017, and by May 15 of each year thereafter, make a report to the Governor and the Legislature that summarizes the data reported by the counties pursuant to subdivision (a).

¹ Specifically, established pursuant to Penal Code Section 1230.

Data to Be Reported

This bill would require that on or before January 1, 2017, and annually each year thereafter, each county shall report specified data to BSCC in a format prescribed by BSCC.

This bill would require BSCC to “specify and define minimum required reporting which shall include, but not be limited to, the following for each individual sentenced” as a jail felon (specifically, sentenced pursuant to Penal Code section 1170(h)):

- (1) Individual identifiers;
- (2) County identifiers;
- (3) Date of birth;
- (4) Gender;
- (5) Race or ethnicity;
- (6) Age at first arrest;
- (7) Conviction offense;
- (8) Sanction or sentence received;
- (9) Total jail time served;
- (10) Release status;
- (11) Violations of probation;
- (12) Rearrests;
- (13) Reconvictions;
- (14) Any other return to custody;
- (15) Use of flash incarceration;
- (16) Assessed risk level;
- (17) Participation in pretrial programs;
- (18) Participation in specialty court;
- (19) Participation in day reporting release programs;
- (20) Participation in electronic monitoring programs;
- (21) Participation in community service release programs;
- (22) Participation in work release programs;
- (23) Participation in intensive probation supervision;
- (24) Needs assessment;
- (25) Any reentry programming provided;
- (26) Participation in cognitive behavioral therapy and whether the individual has completed or failed to complete the therapy’s requirements;
- (27) Participation in mental health treatment and whether the individual has completed or failed to complete the treatment’s requirements;
- (28) Participation in substance abuse treatment and whether the individual has completed or failed to complete the treatment’s requirements;
- (29) Participation in gender-specific programming;
- (30) Participation in family programming;
- (31) Any health care assistance provided;
- (32) Any housing assistance provided;
- (33) Any income support provided;
- (34) Any employment assistance provided;
- (35) Any vocational training assistance provided;
- (36) Any educational enrollment assistance provided;
- (37) Any mentoring programming provided; and,
- (38) Any peer support programming provided.

This bill would require that, on or before January 1, 2017, and annually each year thereafter, each county shall provide specified data to BSCC in a format prescribed by BSCC. This bill would require BSCC to specify and define minimum required reporting which shall include, but not be limited to, the following for each individual released from prison who is subject to local supervision (specifically, “Postrelease Community Supervision,” pursuant to Penal Code Section 3451):

- (1) Violations of postrelease community supervision;
- (2) Rearrests;
- (3) Reconvictions;
- (4) Any other return to custody;
- (5) Use of flash incarceration;
- (6) Participation in intensive probation supervision;
- (7) Any reentry programming provided;
- (8) Participation in cognitive behavioral therapy and whether the individual has completed or failed to complete the therapy’s requirements;
- (9) Participation in mental health treatment and whether the individual has completed or failed to complete the treatment’s requirements;
- (10) Participation in substance abuse treatment and whether the individual has completed or failed to complete the treatment’s requirements;
- (11) Participation in gender-specific programming;
- (12) Participation in family programming;
- (13) Any health care assistance provided;
- (14) Any housing assistance provided;
- (15) Any income support provided;
- (16) Any employment assistance provided;
- (17) Any vocational training assistance provided;
- (18) Any educational enrollment assistance provided;
- (19) Any mentoring programming provided; and,
- (20) Any peer support programming provided.

Appropriation, Local Mandate and Local Planning Grants

This bill contains an unspecified General Fund appropriation to BSCC for the 2016-17 fiscal year for the purposes of implementing its provisions.

This bill would authorize BSCC to award up to the amount of the appropriation, less BSCC’s “administrative costs, not to exceed 5 percent of the total grant funding awarded statewide, as individual grants not exceeding ____to counties to assist in establishing data reporting systems that will allow a county to consistently collect and report criminal justice information as required by (this bill) . . .”

Legislative Findings and Declarations

This bill contains legislative findings and declarations generally concerning the Legislature’s commitment to reducing recidivism among criminal offenders and the 2011 criminal justice realignment (AB 109), as specified.

This bill is an urgency bill, citing the following “facts constituting the necessity”:

In order to ensure that relevant data pertaining to the 2011 Realignment Legislation addressing public safety are collected and reported as soon as possible to allow stakeholders to measure the effectiveness of this landmark change in public safety policy, it is necessary that this bill go into immediate effect.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

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.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 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* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 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* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "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). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and

- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

- AB 109 was passed in 2011 as part of the Budget Act with the intention of cutting costs and creating budgetary savings by largely realigning responsibilities for state inmates to the county level. Counties and local governments are faced with various challenges in complying with AB 109 while also staying committed to both public safety and the rehabilitative goals for offenders.
- Currently, there exists no uniform, statewide set of metrics being collected by all 58 counties in order to track and assess the progress being made with regards to Realignment in California. While counties do report limited criminal data to the Department of Justice, SB 1327 would call for various other important data elements critical to the assessment of Realignment at the local level.
- SB 1327 seeks to provide for the collection and reporting of a broad spectrum of offender and program data, which will help ensure best practices are developed at the local level to promote public safety, reduce recidivism, and address offenders' rehabilitative needs.
- Furthermore, the data collected by SB 1327 will determine if available rehabilitative programs are being utilized to their full effectiveness by determining participant's program completion or non-completion statistics.

2. What This Bill Would Do

As explained in detail above, this bill would enact a framework, established through the BSCC, for collecting information concerning criminal offenders who were “realigned” pursuant to AB 109 in 2011 – specifically, persons who have been convicted of jail felonies and persons who have been released from prison and are subject to local supervision (probation), not parole. The bill enumerates specific data to be included. With respect to jail felons, the data generally pertains to information about the offender, the conviction offense, the sentence, what happened to the person after sentencing, such as jail time, programming and violation behavior. For persons coming out of prison on postrelease community supervision (probation, not parole, supervision), the data generally concerns arrests, violation behavior, sanctions for violations, and programming.

The bill proposes state grants, from a total General Fund amount not specified in the bill, “to assist counties with the creation or expansion of infrastructure that allows each county to consistently collect and report criminal justice information” required by this bill. In addition, this bill would require counties to report to BSCC the data described above. The bill also requires the BSCC to compile local data and make annual reports.

3. Focus of this Bill: The 2011 Criminal Justice Realignment

This bill pertains to data about two specific subgroups of felony offenders – subclasses created over four years ago by the “2011 Realignment Legislation Addressing Public Safety” (AB 109)². These two subgroups are: 1) felony offenders who, because of their conviction offense and criminal history, are subject to serving their terms in *jail* instead of *prison* (“jail” felonies); and 2) felony offenders who, because of their conviction offense and other factors, are subject to *local supervision* instead of *state supervision* (essentially, probation instead of parole) upon release from prison (“postrelease community supervision”).

As noted by the Legislative Analyst’s Office in 2013:

When including all types of criminal cases—felony, misdemeanor, traffic infractions, and juvenile delinquency—there were over 8 million filings in California trial courts in 2009-10. Only a few hundred thousand of these are for felony cases each year. Of adult felony cases brought by the district attorney, 80 percent result in a guilty verdict, and most of these offenders are sentenced to a combination of jail and probation.³

During this same period, 58,700 felons were admitted to prison.⁴ While the data supporting this snapshot predates realignment, it illustrates a felony population broader than what this bill would reach. There are other felons who are handled locally, such as felons who are put on felony probation, and those subject to parole supervision but affected locally by court parole violation and detention decisions, who are not included in this bill. Members and the author may wish to discuss whether felony offenders and what happens to them should be tracked and analyzed more fully, not just the subsets of felony offenders created by realignment.

4. Data Collection

The BSCC currently has responsibilities relating to data collection. As explained in the BSCC’s 4th Quarterly Report from 2013:

The BSCC has the broad responsibility to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including but not limited to prevention, intervention, suppression, supervision, and incapacitation as they relate to both adult corrections, juvenile justice, and gang problems. The BSCC is also required to collect data and complete reports related to public safety realignment, including the development of first phase baseline and ongoing data collection instruments and an annual report on the implementation of local community corrections plans.

Members may wish to discuss how this bill compares to the current data-related activities of the BSCC.

² AB 109 (Committee on Budget) (Ch. 15, Stats. 2011) is the principal measure establishing the 2011 public safety realignment. Subsequent measures have revised AB 109 and enacted additional provisions relating to certain aspects of realignment.

³ *California’s Criminal Justice System: A Primer* (Jan. 2013) Legislative Analyst’s Office.

⁴ *Id.*

5. Prior Legislation

As noted above, this Committee previously has heard two measures virtually identical to this bill. Both of those measures passed this Committee unanimously, and were held in the Senate Appropriations Committee under its suspense file. That Committee's most recent analysis, of SB 753, stated in part:

Fiscal Impact:

- One-time appropriation in 2014-15 from the General Fund of an unspecified amount to establish and implement the grant program. Initial costs would include funding to assist counties in creating or expanding existing infrastructure in order to consistently collect and report specified information. Potential costs to meet the actual need across counties to successfully establish and implement a system of uniform reporting are unknown but would likely be in the hundreds of millions of dollars.
- To the extent the initial appropriation to “assist” counties to create/expand infrastructure is insufficient to meet the data collection and reporting mandates in the bill, the remaining costs to enable counties to comply with the provisions of the bill would either 1) require an additional subvention of funds (General Fund) if applicable to Proposition 30 provisions, or, 2) would result in significant state-reimbursable costs (General Fund).
- Major ongoing General Fund costs, both direct and/or state-reimbursable, potentially in excess of tens of millions of dollars (General Fund) for counties to continually collect and report the specified data. For example, costs to comply with specified data reporting points such as “assessed risk level” could be substantial.
- Resource costs in the range of \$1 million to \$2 million (General Fund) annually to BSCC to review local CCP plans, administer the grants, compile the county-level data, and submit the annual report.

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