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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 872                      **Hearing Date:** April 5, 2016  
**Author:** Hall  
**Version:** January 14, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JRD

**Subject:** *Local Law Enforcement: Supplemental Services*

### HISTORY

**Source:** Los Angeles County Sheriff

**Prior Legislation:** AB 2164 (La Suer) — Chapter 87, Statutes of 2006.  
SB 1313 (Margett) — Chapter 224, Statutes of 2002  
SB 1024 (Johnston) — no vote taken, Assembly Local Government (1995)  
AB 2482 (Young) — Chapter 953, Statutes of 1982

**Support:** California Police Chiefs Association; California State Sheriffs' Association

**Opposition:** Association of Independent California Colleges and Universities;

### PURPOSE

*The purpose of this bill is to allow the board of supervisors of any county to contract on behalf of the sheriff of that county, and the legislative body of any city to contract on behalf of the chief of police of that city, to provide supplemental law enforcement services to private schools, private colleges, and private universities on an occasional or ongoing basis.*

*Under existing law* the board of supervisors of any county may contract on behalf of the sheriff of that county, and the legislative body of any city may contract on behalf of the chief of police of that city, to provide supplemental law enforcement services to:

- Private individuals or private entities to preserve the peace at special events or occurrences that happen on an occasional basis.
- Private nonprofit corporations that are recipients of federal, state, county, or local government low-income housing funds or grants to preserve the peace on an ongoing basis.
- Private entities at critical facilities on an occasional or ongoing basis. A “critical facility” means any building, structure, or complex that in the event of a disaster, whether natural or manmade, poses a threat to public safety, including, but not limited to, airports, oil refineries, and nuclear and conventional fuel powerplants.

(Government Code § 53069.8(a).)

*Under existing law* contracts entered into must provide for full reimbursement to the county or city of the actual costs of providing those services, as determined by the county auditor or auditor-controller, or by the city, as the case may be. (Government Code § 53069.8(b).)

*Existing law* requires that the services provided pursuant to any such contract be rendered by regularly appointed full-time peace officers, as defined in Section 830.1 of the Penal Code. Services provided in connection with special events or occurrences, as specified, may be rendered by Level I reserve peace officers, as defined in paragraph (2) of subdivision (a) of Section 830.6 of the Penal Code, who are authorized to exercise the powers of a peace officer, as defined in Section 830.1 of the Penal Code, if there are no regularly appointed full-time peace officers available to fill the positions as required in the contract. (Government Code § 53069.8(c).)

*Existing law* requires that peace officer rates of pay be governed by a memorandum of understanding. (Government Code § 53069.8(d).)

*Existing law* requires that any such contract encompass only law enforcement duties and not services authorized to be provided by a private patrol operator, as defined. (Government Code § 53069.8(e).)

*Existing law* requires that contracts for law enforcement services, as authorized by this section, not reduce the normal and regular ongoing service that the county, agency of the county, or city otherwise would provide. (Government Code § 53069.8(f).)

*Existing law* provides that prior to contracting for ongoing services the board of supervisors or legislative body, as applicable, must discuss the contract and the requirements of this section at a duly noticed public hearing. (Government Code § 53069.8(g).)

*This bill* would allow the board of supervisors of any county to contract on behalf of the sheriff of that county, and the legislative body of any city to contract on behalf of the chief of police of that city, to provide supplemental law enforcement services to private schools, private colleges, and private universities on an occasional or ongoing basis.

#### 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. Need for This Bill

According to the author:

Schools, colleges and universities throughout the United States have seen a tragic increase in acts of violence and domestic terrorism on campus. In 2015 alone, there were 23 shootings on college campuses across the country that caused the deaths of seventeen people and injured another 27.

In response to these tragic events, some individuals have irresponsibly suggested that schools should arm faculty or administrative staff with guns as a line of defense on campus. Going even further, there has been a suggestion that students on college campuses should be allowed to openly carry loaded weapons. Such reckless decisions fly in the face of the intent of California’s Gun Free School Zones and would only make school campuses less safe by increasing the number of firearms in the hands of untrained and unprepared individuals.

SB 872 would authorize a local law enforcement agency to enter into contracts with private schools, colleges, and universities to provide law enforcement services.

Just as local law enforcement can currently contract with public school districts, colleges, and universities to provide on campus security services, SB 872 will allow a private school, college, or university to also benefit from the professionalism and skill offered by trained law enforcement officers, should they desire.

SB 872 ensures those trained law enforcement officers, not untrained civilians, are able to promptly address an act of violence or domestic terrorism on a school campus and is a responsible step to keep students, faculty, staff and the public safe while on a school or university campus.

## 2. History of Government Code Section 53069.8

Prior to the 1982 enactment of Government Code Section 26228 by Chapter 953, Statutes of 1982, there was no explicit authority for a county to contract with private individuals or entities to provide supplemental law enforcement services. Section 26228 provided that authority for contracts at special events and occurrences that happen on an occasional basis. It appears that the authority was added for the Los Angeles Summer Olympics. Section 26288 was renumbered to the existing section 53069.8 by Chapter 307, Statutes of 1986.

SB 1024 (Johnston) was introduced in 1995 to add a new Government Code section 53069.82 that would have allowed contracts with private parties to preserve the peace at private business premises. A vote never occurred on SB 1024 in the Assembly Local Government Committee. The Senate Committee on Criminal Procedure analysis of SB 1024 - hearing date: April 25, 1995 - contained the following in Comment #1:

At the request of constituents, last year the author asked Legislative Counsel whether or not a county is authorized to enter into a contract with private business to administer an auxiliary security services delivery system. The facts presented included off-duty deputy sheriffs engaging in private employment as security guards or patrolpersons on a compensated basis with the private employer directly reimbursing the off-duty deputies and all other costs being borne by the county.

Legislative Counsel opined: no.

The same conclusion was reached in Attorney General's Opinion No. 84-204 (July 19, 1985) which found that "Neither cities, counties, nor their heads of law enforcement have authority to contract with private parties for regular ongoing private security services."

Government Code Section 53069.8 was then amended in 2002 (SB 1313 (Margett) Chapter 224, Statutes of 2002) to: (1) add two new groups with whom local governments may enter contracts for supplemental services to be provided, and (2) expand the permissible scope of the contracts to allow that such services may be provided on an ongoing basis. Specifically, SB 1313 permitted contracts with "private nonprofit corporations that are recipients of federal, state, county, or local government low-income housing funds or grants to preserve the peace on an ongoing basis" as well as with private entities at critical facilities on an occasional or ongoing basis. A "critical facility" is defined as any building, structure, or complex that in the event of a disaster, whether

natural or manmade, poses a threat to public safety, including, but not limited to, airports, oil refineries, and nuclear and conventional fuel powerplants.

### **3. Effect of This Bill**

This bill would allow payment under contract for law enforcement services that a local sheriff or city police chief could otherwise provide as a matter of regular policing. This bill adds to existing law another circumstance in which contracts may be established to provide supplemental law enforcement services to private entities. Specially, this bill allows law enforcement to contract to provide services to private schools, private colleges, and private universities on an occasional or ongoing basis. However, the local police agency would still have the responsibility to provide police services, with or without a supplemental contract.

Given that 58 counties and 482 cities in California would be able to use section 53069.8 as it is proposed to be amended, is it clear in what circumstances this bill might be utilized? Is it possible that there is at least some risk that this bill may lead to law enforcement decisions on the basis of the ability to pay for at least some sites and locations? This bill adds a new circumstance where contracts may be established for services provided on an ongoing basis. Is there realistically any way for those services to be provided on an ongoing basis without impacting “the normal and regular ongoing services” as is prohibited in the existing statute in subdivision (f)?

### **4. Argument in Opposition**

The Association of Independent California Colleges and Universities states:

I am writing to express our opposition to your Senate Bill (SB) 872. While we greatly appreciate your concern for the safety of students and campuses, and the support our local law enforcement agencies provide higher education institutions, we believe this legislation would create unnecessary confusion for our institutions that already have agreements with their local law enforcement agencies.

California’s independent, nonprofit higher education institutions operate under Memorandums of Understanding, pursuant to current penal codes, with their local police or sheriff’s departments that allow them varying degrees of responsibilities, depending on the needs of the campus and the agreement of their local law enforcement agency. Our campuses, and their respective agencies, work closely on these MOUs and they work well for our institutions. We are not aware of any campuses who wish to use their local law enforcement agency for full-time enforcement in a manner that is consistent with the intent of this bill.

Ultimately, we are very concerned that this legislation would create unnecessary confusion for our institutions and local law enforcement agencies regarding their current MOUs and the services that are already provided to and by campuses. For these reasons, we must respectfully oppose SB 872.

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