
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2178 **Hearing Date:** June 18, 2024
Author: Ting
Version: March 21, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Prisons: bed thresholds*

HISTORY

Source: Author

Prior Legislation: AB 134 (Comm. on Budget), Ch. 47, Stats. 2023
SB 118 (Comm. on Budget & Fiscal Rev.), Ch. 859, Stats. 2020
Proposition 57, as approved by the voters on November 8, 2016
Proposition 47, as approved by the voters on November 4, 2014
Proposition 36, as approved by the voters on November 6, 2012
AB 109 (Comm. on Budget), Ch. 15, Stats. 2011

Support: ACLU California Action; Buen Vecino; California Immigrant Policy Center; California Nurses Association; California Public Defenders Association; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice; Critical Resistance; Dignity and Power Now; Ella Baker Center for Human Rights; Essie Justice Group; Felony Murder Elimination Project; Friends Committee on Legislation of California; Human Impact Partners; Immigrant Legal Resource Center; Indivisible CA StateStrong; Initiate Justice; Initiate Justice Action; Just Advocate, Inc.; La Defensa; Lavender Phoenix; National Nurses United; Riverside All of Us or None; Root & Rebound; San Francisco Public Defender; Smart Justice California; South Bay People Power; The Translatin@ Coalition; Universidad Popular

Opposition: California Association of Psychiatric Technicians

Assembly Floor Vote: 46 - 17

PURPOSE

The purpose of this bill is to require the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to ensure that state prisons maintain average daily empty bed thresholds, as specified.

Existing law establishes CDCR which is headed by a Secretary. (Gov. Code, §12838, subd. (a).)

Existing law requires the Secretary of CDCR to assure compliance with the terms of any state plan, memorandums of understanding, administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon. (Gov. Code, § 12838.7, subd. (b).)

Existing law vests the authority to supervise, manage, and control state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined in state prisons, in the Secretary. (Pen. Code, § 5054.)

Existing law authorizes the Secretary to prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

Existing law requires CDCR to remove all incarcerated persons from, cease operations of, and close, the California Correctional Center located in the Town of Susanville, California, no later than June 30, 2023. (Pen. Code, § 5003.7.)

Existing law states the intent of the Legislature to close additional prisons in the state prison system. Provides that maintaining prison capacity beyond what is necessary for safety, operational flexibility, and to support rehabilitation is not cost effective and reducing excess capacity of the prison system would create savings that may be used for rehabilitative and other purposes. (Pen. Code, § 5033, subd. (a).)

Existing law requires the Secretary to provide written notification to any county impacted by the opening, closing, or changing of location of any reception center that accepts prisoners from county facilities, or by the opening, closing, or changing of the location of a parole office, as specified. (Pen. Code, § 5003.2, subd. (a).)

Existing law requires CDCR, to the extent that the adult offender population continues to decline, to accommodate the projected population decline by reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities, in a manner that maximizes long-term state facility savings, leverages long-term investments, and maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. Requires the department to take into consideration the following factors, including, but not limited to: the cost to operate at the capacity; workforce impacts; subpopulation and gender-specific housing needs; long-term investment in state-owned and operated correctional facilities, including previous investments; public safety and rehabilitation, and the durability of the state's solution to prison overcrowding. (Pen. Code, § 2067, subd. (b).)

Existing law states that criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. (Pen. Code, § 17.5, subd. (a)(3).)

Existing law provides that, in order to avoid the release of prisoners by federal court order, CDCR shall have the authority to award credits for good behavior and approved rehabilitative or educational achievement. (Cal. Const., art. I, § 32.)

This bill requires the secretary to ensure that state prisons do not maintain more empty beds in operation, on an average daily population basis, than specified.

This bill provides that the secretary may allow the number of empty beds to exceed the benchmarks specified if necessary to address exigent circumstances. Requires the secretary to provide written explanation of the circumstances and resulting need to maintain additional empty beds to the Joint Legislative Budget Committee no later than 30 days after determining it will be necessary to exceed the specified benchmarks.

This bill provides that the average daily empty bed thresholds are as follows for each fiscal year:

- 11,300 for 2025-26.
- 9,900 for 2026-27.
- 8,400 for 2027-28.
- 5,900 for 2028-29.
- 2,500 for 2029-30 and thereafter.

This bill includes codified legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

Thousands of prison beds aren't in use right now. Beds are empty because the State's prison population has steadily declined over the years. According to CDCR, the number of people incarcerated in 2019 was nearly 130,000. Today, the population sits at roughly 93,000. In February, the LAO released a report estimating we could save roughly \$1 billion annually if California closes five prisons. If we don't close the facilities, per the LAO report roughly one fifth of the prison capacity will go unused. Further, by closing prisons, the State could save up to roughly \$2 billion over the next ten years on capital outlay projects. AB 2178 is a structured approach to addressing the state's empty prison bed issue, allowing for the State to use saved dollars for other critical needs such as foster care, education, housing, and other integral services, as opposed to sustaining empty beds.

2. Court-Ordered Population Limit

California prisons are subject to a federal court order related to prison overcrowding that limits the total number of people that can be housed to 137.5 percent of their collective design capacity. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The U.S. Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

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. Design capacity generally refers to the number of beds CDCR would operate if it housed only one person per cell and did not use bunk beds in dormitories. (Legislative Analyst’s Office (LAO), *The 2024-25 Budget: California Department of Corrections and Rehabilitation* (Feb. 2024), pp. 5-6 available at <https://lao.ca.gov/Publications/Report/4852#Prison_Capacity_Reduction> [hereinafter LAO Report].)

As of June 5, 2024, 91,589 individuals were housed in the state’s prisons. (CDCR, Division of Correctional Policy Research and Internal Oversight, *Weekly Report of Population*, p. 1 available at <<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/06/Tpop1d240605.pdf>>.) CDCR’s current institutional design capacity is 75,526. (*Ibid.*) Accordingly, CDCR is currently occupying 119 percent of design capacity. (*Ibid.*)

The court-ordered cap on the prison population means that the state is prohibited from housing more than a total of 103,853 people in state-owned prisons. (LAO Report, *supra*, at p. 6.) It also means that when prisons or yards are activated or deactivated, this population limit is increased or decreased by 137.5 percent of the design capacity of the affected prison or yard. (*Ibid.*)

3. Prison Closures

CDCR’s prison population has declined by more than 78,000 since 2010 as a result of state legislation, voter initiatives, federal court orders, and administrative actions by CDCR. (CDCR, *Three-Judge Quarterly Update*, available at <<https://www.cdcr.ca.gov/3-judge-court-update/>>.) As a result, two prisons have closed since 2021, Deuel Vocational Institution and California Correctional Center. In December 2022, CDCR announced the planned closure of Chuckawalla Valley State Prison (CVSP) by March 2025. (CDCR, *Reduction/Closure Information*, available at <<https://www.cdcr.ca.gov/prison-closures/>>.) In addition to the closure of CVSP, facilities within other state prisons will be deactivated, including Folsom Women’s Facility (deactivated January 2023), West Facility in California Men’s Colony, Facility C in Pelican Bay State Prison, Facility A in California Rehabilitation Center, Facility D in California Institution for Men, and Facility D in California Correctional Institution. (CDCR, *Prison Closures—Frequently Asked Questions*, available at <<https://www.cdcr.ca.gov/prison-closures/prison-closure-frequently-asked-questions/>>.)

After a prison closes, it enters a “warm shutdown” phase, meaning minimal staff will remain on-site to maintain basic facility operations so they do not deteriorate while the building is unused, such as electrical systems, heating/ventilation equipment, and the exterior grounds. (*Ibid.*) Generally a warm shutdown lasts for a couple of years, at which time the property is transferred to the Department of General Services as surplus property and evaluated for other potential state uses. (*Ibid.*)

4. Governor's Budget

Although the prison population has steadily declined in recent years, the proposed 2024-2025 Budget indicated that there would not be further capacity reductions. (Governor Newsom, *Governor's Budget Summary 2024-2025*, p. 70 available at <<https://ebudget.ca.gov/2024-25/pdf/BudgetSummary/FullBudgetSummary.pdf>> [hereinafter Budget Summary].) The 2023 Budget codified the Legislature's intent to close additional prisons in the state prison system and explicitly noted that "[m]aintaining prison capacity beyond what is necessary for safety, operational flexibility, and to support rehabilitation is not cost effective and reducing excess capacity of the prison system would create savings that may be used for rehabilitative and other purposes." (Pen. Code, § 5033, subd. (a).) It also required CDCR to prepare and submit a preliminary assessment, including the department's overall housing needs, to help inform decisions relating to prison closures by August 15, 2023. (Pen. Code, § 5033, subd. (b).) As part of the assessment, CDCR was required to include an assessment of available space for educational and rehabilitative programming, health care services, specialized bed needs, flexible bed needs, including those needed for quarantines or natural disasters, and space needed to comply with class action litigation requirements. (*Ibid.*)

In discussing the assessment required in Penal Code section 5033, the Governor's 2024-2025 Budget Summary noted:

The factors affecting the appropriate operating capacity have changed over time and are no longer as simple as calculating the number of available beds. As the state has made improvements in health care services, the provision of rehabilitative programs, and the successful reentry of incarcerated individuals, the operational capacity must be viewed through a new lens, focusing on the space needed to provide services to support the incarcerated population. (Budget Summary, *supra*, at pp. 71-72.)

5. LAO Recommendations

In reviewing the Governor's proposed 2024-2025 budget, the LAO reported that the prison population had declined significantly in recent years and is expected to remain low through June 2028. (LAO Report, *supra*, at p. 6.) The LAO noted that the Governor's proposal would leave approximately 15,000 empty beds in the near term, and nearly 19,000 empty prison beds by 2028—comprising about one-fifth of the state's total prison capacity. (*Id.* at p. 8.)

In response to suggestions to further reduce capacity, the Administration raised concerns regarding an increased risk in violating the court-ordered population limit, the increased complexity in housing placement, and a reduction in the number of assignments for the incarcerated population. (*Id.* at pp. 6-7.) The LAO indicated that these concerns could be mitigated by maintaining a 2,500 person "buffer" below the court-ordered population limit, changing housing placement policies to create more flexibility, and using the assignment structure more effectively. (*Id.* at p. 10.)

The LAO concluded that “the state could be in a position to deactivate around five additional prisons by 2028 while still remaining roughly 2,500 people below the court-ordered population limit.” (*Id.* at p. 8) In light of this, the LAO made the following recommendations to the Legislature:

We recommend that the Legislature direct CDCR to begin planning to reduce capacity by the end of 2028. Deactivating whole prisons would create greater savings than deactivating yards at various prisons. We estimate that deactivating five prisons, for example, could allow the state to save nearly \$1 billion in ongoing General Fund costs. This would not only help reduce the state’s structural budget shortfall in the years to come but would bring CDCR into compliance with PC 2067.

We recommend that the Legislature direct CDCR to report by January 10, 2025 on (1) which specific prisons it plans to deactivate, (2) any specific concerns it identifies with these deactivations, as well as (3) strategies for and estimated costs of mitigating those concerns.

Deactivation of multiple prisons by 2028 would likely reduce CDCR’s need for new correctional officers over the period when the prisons are being deactivated. To ensure savings associated with this reduced need are captured, we recommend that the Legislature direct CDCR to report by January 10, 2025 on (1) the projected impact of deactivations on its need for new correctional officers and (2) plans to scale back academy operations accordingly.

We recommend the Legislature approve the proposed adjustments related to the previously approved deactivations, including the savings related to centralized services and the planned deactivation of CVSP by March 2025. This will help address the state’s budget problem in the budget and future years.
(*Id.* at p. 11)

6. Effect of This Bill

This bill establishes the average daily empty bed thresholds as follows for each fiscal year beginning in 2025-2026:

- 11,300 for 2025-26.
- 9,900 for 2026-27.
- 8,400 for 2027-28.
- 5,900 for 2028-29.
- 2,500 for 2029-30 and thereafter.

This bill provides that the Secretary may allow the number of empty beds to exceed the specified benchmarks if necessary to address exigent circumstances, but requires the Secretary to provide a written explanation of the exigent circumstances and resulting need to maintain additional empty beds to the Joint Legislative Budget Committee no later than 30 days after determining it will be necessary to exceed the specified benchmarks.

7. Argument in Support

The California Public Defenders Association writes:

... AB 2178 helps save State dollars that are currently being used to sustain empty prison beds so that other critical needs can be met.

According to the Legislative Analyst's Office's (LAO) February report on the California Department of Corrections and Rehabilitation (CDCR), in 2019, the number of individuals incarcerated was nearly 130,000. As of January 2024, the total number of people incarcerated is roughly 93,000 people. The prison population has steadily declined and is expected to remain on a steady decline through June 2028. Per the LAO, by 2028, the State could have nearly 19,000 empty prison beds, equal to about one-fifth of the state's total prison capacity. The report additionally notes that if we close five prisons, we could save roughly \$1 billion annually.

... The funding currently being wasted on empty prison beds could be spent on rehabilitative programs and resources that support a productive and successful reintegration into society. AB 2178 provides a structured approach to addressing the state's empty prison bed issue by requiring the CDCR Secretary to ensure the state prisons maintain a daily bed threshold for each fiscal year.

8. Argument in Opposition

According to the California Association of Psychiatric Technicians:

The California Department of Corrections and Rehabilitation (CDCR) has a designed inmate capacity of 79,000, yet the current population is 94,000. Despite a steady decline in the prison population over recent years, CDCR remains significantly above its designed safety capacity. In the 1990s, an incarceration rate that outpaced the designed capacity led to double-bunking inmates. This resulted in more violent institutions, reduced rehabilitation programming, and diminished medical and mental health treatment, ultimately placing the department in receivership.

AB 2178 would require the department to reduce its vacant bed threshold progressively, as follows: 11,300 for 2025-26, 9,900 for 2026-27, 8,400 for 2027-28, 5,900 for 2028-29, 2,500 for 2029-30, and to maintain these levels thereafter. Achieving these reductions would necessitate a return to double bunking as the primary method of housing inmates sufficiently.

From a mental health treatment standpoint, reducing the number of vacant beds forces the department to continue the long-standing and problematic practice of warehousing inmates. This practice contributed to CDCR's receivership status. Mentally ill inmates require adequate space to feel safe from being targeted or preyed upon by higher-functioning inmates. Furthermore, staff working with the

mentally ill population face increased risks of violent episodes, attacks, or assaults under overcrowded conditions.

Additionally, this bill effectively mandates the deactivation of prisons. While the bill does not explicitly state this, closing three or more prisons is the only feasible way to achieve the proposed bed space reductions. Current legislative policies and a pending ballot initiative may increase the need for prison beds. Once a prison has been deactivated, it would take several years to bring it back online, complicating future needs.

In conclusion, instituting a bed vacancy cap as proposed in AB 2178 will intensify overcrowding, increase risks of violence, and diminish essential programming and treatment opportunities. We urge you to reconsider this bill and explore alternative solutions that address the root causes of these issues without compromising the safety and rehabilitation efforts within our prison system.

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