
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2882 **Hearing Date:** July 2, 2024
Author: McCarty
Version: June 20, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *California Community Corrections Performance Incentives*

HISTORY

Source: Californians for Safety and Justice
Steinberg Institute

Prior Legislation: AB 109 (Comm. on Budget), Ch. 15, Stats. 2011
SB 678 (Leno), Ch. 608, Stats. 2009

Support: California Public Defenders Association; Ella Baker Center for Human Rights;
Initiate Justice; La Defensa; National Alliance on Mental Illness

Opposition: California Fraternal Order of Police; California State Association of Counties;
California State Sheriffs' Association; Chief Probation Officers of California;
County of Kern; County of Madera; County of Mendocino; County of Monterey;
County of Riverside; County of Sacramento; County of San Joaquin; County of
San Luis Obispo; County of Santa Barbara; County of Shasta; County of Solano;
County of Ventura; Peace Officers Research Association of California; Rural
County Representatives of California; Sacramento County Probation Association;
San Francisco Deputy Probation Officers Association; San Joaquin County Board
of Supervisors; State Coalition of Probation Organizations; Urban Counties of
California; Ventura County Professional Peace Officers Association

Assembly Floor Vote: 46 - 17

PURPOSE

The purpose of this bill is to require the inclusion of the heads of a county's department of social services, department of mental health, and county alcohol and substance abuse programs, on each county's executive committee of the local Community Corrections Partnership (CCP); and require the CCP to submit the approved local plan for the implementation of the 2011 public safety realignment to the Board of State and Community Corrections (BSCC) annually.

Existing law declares that probation is a judicially imposed suspension of sentence that attempts to supervise, treat, and rehabilitate offenders while they remain in the community under the supervision of the probation department. Declares that probation is a linchpin of the criminal justice system, closely aligned with the courts, and plays a central role in promoting public safety in California's communities. (Pen. Code, § 1228, subd. (c).)

Existing law declares that providing sustainable funding for improved, evidence-based probation supervision practices and capacities will improve public safety outcomes among adult felons who are on probation. Provides that improving felony probation performance, measured by a reduction in felony probationers who are sent to prison because they were revoked on probation or convicted of another crime while on probation, will reduce the number of new admissions to state prison, saving taxpayer dollars and allowing a portion of those state savings to be redirected to probation for investing in community corrections programs. (Pen. Code, § 1228, subd. (d).)

Existing law provides the following definitions:

- “Community corrections” means the placement of persons convicted of a felony offense under probation supervision, mandatory supervision, or postrelease community supervision for a specified period.
- “Chief probation officer” or “CPO” means the chief probation officer for the county or city and county in which an adult offender is subject to probation for the conviction of a felony offense.
- “Community corrections program” means a program established pursuant to the California Community Corrections Performance Incentives Act of 2009 (the Act) consisting of a system of services for felony offenders under local supervision dedicated to all of the following goals:
 - Enhancing public safety through the management and reduction of offender risk while under local supervision and upon reentry from jail or prison into the community.
 - Providing a range of supervision tools, sanctions, and services applied to felony offenders subject to local supervision based on a risk and needs assessment for the purpose of reducing criminal conduct and promoting behavioral change that results in reducing recidivism and promoting the successful reintegration of offenders into the community.
 - Maximizing offender restitution, reconciliation, and restorative services to victims of crime.
 - Holding offenders accountable for their criminal behaviors and for successful compliance with applicable court orders and conditions of supervision.
 - Improving public safety outcomes for persons subject to local supervision for a felony offense, as measured by their successful completion of the period of local supervision and the commensurate reduction in the rate of offenders sent to prison as a result of a revocation of supervision or conviction of a new crime.
- “Evidence-based practices” refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under local supervision.
- “Local supervision” means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.
(Pen. Code, § 1229.)

Existing law authorizes each county to establish in its treasury a Community Corrections Performance Incentives Fund (CCPIF) to receive all amounts allocated to that county for purposes of implementing the Act. (Pen. Code, § 1230, subd. (a).)

Existing law requires, in any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, to be made available to

the county's chief probation officer, within 30 days of the deposit into the fund, for the implementation of the community corrections program authorized by this chapter. (Pen. Code, § 1230, subd. (b).)

Existing law requires the community corrections program to be developed and implemented by probation and advised by a local CCP. (Pen. Code, § 1230, subd. (b)(1).)

Existing law requires the local CCP to be chaired by the CPO and comprised of the following members:

- The presiding judge of the superior court, or his or her designee.
- A county supervisor or the chief administrative officer for the county or a designee of the board of supervisors.
- The district attorney.
- The public defender.
- The sheriff.
- A chief of police.
- The head of the county department of social services.
- The head of the county department of mental health.
- The head of the county department of employment.
- The head of the county alcohol and substance abuse programs.
- The head of the county office of education.
- A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense.
- An individual who represents the interests of victims.
(Pen. Code, § 1230, subd. (b)(2).)

Existing law requires funds allocated to probation to be used to provide supervision and rehabilitative services for adult felony offenders subject to local supervision, and to be spent on evidence-based community corrections practices and programs, which may include, but is not limited to:

- Implementing and expanding evidence-based risk and needs assessments.
- Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days.
- Providing more intensive local supervision.
- Expanding the availability of evidence-based rehabilitation programs including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services.
- Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.
(Pen. Code, § 1230, subd. (b)(3).)

Existing law provides that the CPO has discretion to spend funds on any of the above practices and programs consistent with this Act but, at a minimum, requires at least 5 percent of all funding received to be used to evaluate the effectiveness of those programs and practices

implemented with the funds provided. Authorizes a CPO to petition the Judicial Council to have this restriction waived, and provides the Judicial Council the authority to grant such a petition, if the CPO can demonstrate that the department is already devoting sufficient funds to the evaluation of these programs and practices. (Pen. Code, § 1230, subd. (b)(4).)

Existing law requires each probation department receiving funds to maintain a complete and accurate accounting of all funds received. (Pen. Code, § 1230, subd. (b)(5).)

Existing law requires each county local CCP to recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment. (Pen. Code, § 1230.1, subd. (a).)

Existing law requires the plan to be voted on by an executive committee of each county's CCP consisting of the chief probation officer as chair, the chief of police, the sheriff, the District Attorney, the Public Defender, the presiding judge of the superior court, or their designee, and one representative from the county department of social services, the county department of mental health, or the county alcohol and substance abuse programs, as designated by the county board of supervisors for purposes related to the development and presentation of the plan. (Pen. Code, § 1230.1, subd. (b).)

Existing law requires the plan to be deemed accepted by the county board of supervisors unless the board rejects the plan by a vote of four-fifths of the board, in which case the plan goes back to the CCP for further consideration. (Pen. Code, § 1230.1, subd. (c).)

Existing law permits the plan, consistent with local needs and resources, to include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs. (Pen. Code, § 1230.1, subd. (d).)

Existing law provides that the mission of the BSCC includes 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, and to promote legal and safe conditions for youth, inmates, and staff in local detention facilities. Requires this mission to 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. (Pen. Code, § 6024, subd. (b).)

Existing law provides that it is the duty of the BSCC 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 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. (Pen. Code, § 6027, subd. (a).)

This bill adds the following members to the local CCP:

- A representative of a community-based organization with experience in successfully providing behavioral health treatment services to persons who have been convicted of a criminal offense.
- A representative of a Medi-Cal managed care plan, as defined, which provides the Enhanced Care Management benefit.

This bill requires one representative each from the county department of social services, the county department of mental health, or the county alcohol and substance abuse programs to be on the executive committee of each local CCP. Provides that in counties where one or more of the departments for social services, mental health, or alcohol and substance abuse programs are consolidated, the department head has the number of votes equivalent to the number of departments the person represents.

This bill requires the local CCP to submit the accepted plan annually to the BSCC.

This bill requires each county's board of supervisors to attest that the plan has been accepted and is accurate before it is submitted to the board.

This bill requires the plan to include an analysis and recommendations of how criminal justice resources may be spent as matching funds for other sources, including, but not limited to, Medi-Cal federal financial participation.

This bill requires the plan to include quantifiable goals for improving the community corrections system, including, but not limited to, all of the following:

- Reducing the daily jail population.
- Reducing jail bookings.
- Reducing the average length of jail stay.
- Increasing postrelease connections to community-based behavioral health services for persons with a serious mental illness or substance use disorder.
- Reducing rates of recidivism.

This bill requires county goals to include specific targets for reducing disparities for populations disproportionately represented in the community corrections system, including, but not limited to, individuals with a serious mental illness or substance use disorder, Black, Indigenous, people of color, and LGBTQ+ people.

COMMENTS

1. Need For This Bill

According to the author:

AB 2882 will ensure every public safety dollar is used to its fullest potential and help the state reach its goals of reduced recidivism by encouraging collaboration and communication between local public safety and behavioral health

professionals. Research consistently demonstrates that addressing the behavioral health needs of our justice involved-population reduces recidivism.

2. California Community Corrections Performance Incentives Act

Senate Bill 678 (Leno), Chapter 608, Statutes of 2009, codified the California Community Corrections Performance Incentives Act. The purpose of the bill was to “establish a system of performance-based funding to support evidence-based practices relating to the supervision of adult felony probationers.” (Assem. Com. on Public Safety, 3rd reading analysis of Sen. Bill No. 678 (2009-2010 Reg. Sess.) as amended Sept. 12, 2009, p. 1.) The legislative findings and declarations of SB 678 outline the circumstances at the time—a felony probation population of almost 270,000 and nearly 20,000 new prison admissions as the result of “failing probation supervision” in 2007. (Pen. Code, § 1228.)

Existing law requires the Judicial Council, in consultation with the Department of Corrections and Rehabilitation, the Department of Finance, and the Chief Probation Officers of California, to submit an annual comprehensive report to the Governor and the Legislature on the implementation of the California Community Corrections Performance Act of 2009. (Pen. Code, § 1232.) In its most recent report, the Judicial Council summarizes the act and its outcomes as follows:

The California Community Corrections Performance Incentives Act of 2009 (Sen. Bill 678) was designed to alleviate state prison overcrowding and save state General Fund monies by reducing the number of adult felony probationers sent to state prison—and to meet these objectives without compromising public safety. The SB 678 program allocates a portion of state savings from reduced prison costs to county probation departments that implement evidence-based supervision practices and achieve a reduction in the number of locally supervised felony offenders revoked to state prison. The program has been successful in supporting probation departments’ increased use of evidence-based practices (EBPs) and lowering the percentage of individuals returned to custody without evident negative impact to public safety.

By lowering the number of supervised offenders sent to state prison through the SB 678 performance-based funding mechanism, the program has resulted in allocations to county probation departments ranging from \$88.6 million to \$138.3 million per fiscal year (FY), for a total of \$1.3 billion—including \$122.8 million in FY 2022–23 alone. In addition, in each of the years since the start of the SB 678 program, the state’s overall revocation rate has been lower than the original baseline rate of 7.9 percent. And although the number of offenders revoked has decreased, California’s crime rates have remained below the 2008 baseline levels, with no evidence to suggest that public safety has been negatively affected by the SB 678 program.

A fundamental component of SB 678 is the implementation of EBPs by county probation departments. SB 678 defines evidence-based practices as “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.” Although no probation department in the state has fully implemented EBPs in all facets of supervision, findings from an annual survey

indicate that the SB 678 program has been highly successful in increasing the levels of EBP implementation throughout the state. All components of EBPs measured in the survey are substantially higher than they were at baseline. The most significant advancements in EBP implementation occurred in the earliest stages of the program and have stabilized over time. Given these positive outcomes, the state and the counties have an interest in sustaining and expanding on the effectiveness of the SB 678 program.

(Judicial Council, *Report on the California Community Corrections Performance Act of 2009: Findings from the SB 678 Program* (2023) (Aug. 9, 2023), p. 1 available at <[lr-2023-CA_Community_Corrections_Performance_Incentives_Act_2009_Penal-Code-1232.pdf](#)>.)

The Legislative Analyst’s Office (LAO) recently reviewed the effectiveness of the SB 678 program. Despite initial success, the LAO determined that it was “unclear whether the program continues to achieve its goals” for the following reasons:

(1) [T]he effects of SB 678 on the prison population, state savings, and crime are difficult to distinguish from other policy changes; (2) components of the current formula do not align with the original goals of the program; and (3) it is unclear whether counties are actually implementing evidence-based practices, which is important for achieving the goal of improving public safety.”

(LAO, *Achieving the Goals of the SB 678 County Probation Grant Program* (Oct. 2023), p. 3 available at <<https://lao.ca.gov/reports/2023/4806/SB-678-Funding-Formula-101023.pdf>>.)

The LAO recommended creating a new funding formula for the program to better ensure that the program’s goals are achieved. (*Ibid.*) Specifically, the LAO recommended creating a new formula with two portions—a portion based on direct measures of performance and state savings and a portion designed to pay for specific evidence-based practices. (*Ibid.*) The LAO concluded that this proposed funding formula “as well as establishing additional oversight mechanisms of the program, would better ensure the program is effectively reducing failure-to-prison rates for those on county felony supervision, creating state savings, and improving public safety.” (*Ibid.*)

3. AB 109 Realignment

AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Public Safety Realignment which, among other things, limited which felons could be sent to state prison and affected supervision after release from custody. In enacting Realignment, the Legislature reaffirmed its commitment to reducing recidivism. (Pen. Code, § 17.5, subd. (a)(1).) The Legislature additionally expressed the following:

- 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.
- California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state’s substantial investment in its criminal justice system.

- Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.
- Community-based corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for low-level offender populations. Each county's Local Community Corrections Partnership should play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders.
- Fiscal concerns and programs should align to promote a justice reinvestment strategy that fits each county.
- Community-based punishment means evidenced based correctional sanctions and programming other than jail incarceration alone or traditional routine probation supervision. Intermediate sanctions may be provided by local public safety entities directly or through community-based public or private correctional service provider (See Pen. Code, § 17.5, subd. (a)(3)-(8).)

As the result of the significant changes resulting from Realignment with respect to which felony offenders could be committed to state prison as well as the shift from state supervision to local supervision of most felony offenders upon release from custody, changes were made to how the California Community Corrections Performance Act of 2009 is funded. (Judicial Council, *supra*, at pp. 1-2.)

The Center on Juvenile and Criminal Justice published a report earlier this year examining the use and reporting of AB 109 funding by the counties. The report concluded:

- County plans are cursory, offering little information about how funds are being spent.
 - Counties report spending data inconsistently, making it difficult to track budgets over time or to compare across counties.
 - The state asks far less of counties when implementing AB 109 than it does for other, much smaller, funding programs.
 - Absent oversight and accountability, counties may mismanage AB 109 funds.
 - Law enforcement agencies receive the vast majority of AB 109 funds despite significant declines in jail and probation populations.
- (Center on Juvenile and Criminal Justice, *Unseen Billions: Every year, California makes a massive investment in jails and probation, with little county transparency or state oversight* (May 2024), p. 1 available at < <https://www.cjcj.com/reports-publications/report/unseen-billions>>.)

The report offered the following recommendations: standardize CCP reports across all counties; require BSCC to produce accessible annual budget summaries; and boost community involvement in local spending decisions. (*Id.* at pp. 8-9.) This bill largely adopts the recommendations in the report.

4. Effect of This Bill

This bill does a number of things. First, it adds two members to a local CCP: a representative of a community-based organization with experience in successfully providing behavioral health

treatment services to persons who have been convicted of a criminal offense, and a representative of a Medi-Cal managed care plan, as defined, which provides the Enhanced Care Management benefit.

This bill also requires one representative each from the county department of social services, the county department of mental health, or the county alcohol and substance abuse programs to be on the executive committee of each local CCP, and specifies that in counties where one or more of the departments for social services, mental health, or alcohol and substance abuse programs are consolidated, the department head has the number of votes equivalent to the number of departments the person represents.

This bill additionally requires the local CCP to submit the accepted plan annually to the BSCC. Finally, this bill requires the plan to include an analysis and recommendations of how criminal justice resources may be spent as matching funds for other sources, including, but not limited to, Medi-Cal federal financial participation, and requires the plan to include specific goals such as reducing the daily jail population, reducing the average length of jail stay, increasing post-release connections to community-based behavioral health services for persons with a serious mental illness or substance use disorder, among others, and reducing disparities for populations disproportionately represented in the community corrections system.

5. Argument in Support

The Steinberg Institute, one of the bill's co-sponsors writes:

Those housed in county jails are increasingly in need of mental health care. The share of people incarcerated in California county jails with mental health needs has been steadily increasing in recent decades. Today, 53% of county inmates have mental health needs – up from approximately 20% in 2010.

Research consistently demonstrates that addressing the behavioral health needs of our justice-involved population reduces recidivism, which is why it was called out in public safety realignment as a tool in reaching out statewide goals.

In 2011, California shifted responsibility for lower-level felony convictions from state prison and parole to county jail and probation. This major policy shift, known as public safety realignment, tasked counties with reducing recidivism through evidence-based programs, including behavioral health treatment. In exchange, counties received state funds—\$2 billion in fiscal year 2022-23—to carry out this work. Counties determine how annual public safety realignment funds are spent through a stakeholder process.

Since public safety realignment, the mental health needs of California's jail population have sharply risen. At the same time, the state has undertaken major behavioral health reforms intended to support this population and make improvements to how behavioral health data is reported. The largest of these reforms include: (1) the California Advancing and Innovating Medi-Cal (CalAIM) initiative enacted by the Department of Health Care Services (DHCS), including criminal justice components, and (2) Proposition 1, which, if approved by voters on the March 2024 ballot, will include justice-involved people as one focus population for billions of dollars in behavioral health funding.

The public safety realignment spending process does not account for the number of people in jail with these behavioral health needs or recent reforms in county behavioral health policy. As a result, precious dollars are being left on the table that could help counties better serve people in their care as well as meet their goals of reducing recidivism.

AB 2882 will ensure we use every dollar to its fullest potential and reach our goals of reduced recidivism, by requiring (1) county-led goal-setting to maximize all available resource and (2) the incorporation of more behavioral health stakeholders into local planning.

6. Argument in Opposition

According to the Chief Probation Officers of California:

AB 2882 ... would redirect and recast vital public safety planning in response to duties and populations shifted to the counties pursuant to 2011 Public Safety Realignment. We are concerned the bill upends the existing purpose and mission which is still a critical component to the public safety response in our communities due to the historic shift of population from state control to local control. ... Any roll back or impediments to counties' delivery of public safety services via the redirection of focus and/or resources away from the entities tasked with the responsibility of providing public safety is ill-advised and exacerbates public safety concerns.

In 2011, Governor Brown signed AB 109 ... which reflected a landmark shift in the State's approach to criminal justice through the transfer of criminal justice service delivery and responsibility to counties. ... Associated with this realigned responsibility was the investment of funding to counties to carry out the transfer of populations and duties. Shifting the responsibilities for the justice population that was previously handled by the state to local counties requires not only a funding shift, but protections that would enable counties to support the necessary investments to minimize the public safety impact.

...

While it is true that the populations being shifted have behavioral health needs, it is inaccurate to assume that is the only need of our populations of that Realignment was done to singularly address the delivery of behavioral treatment.

This bill would change the composition of the local Community Corrections Partnership (CCP) that is responsible for developing the local public safety realignment plan. In doing so, the bill moves the public safety realignment framework further away from developing public safety responses and towards the redirection of funding for behavioral health services. The population in which the CCP's develop plans to support, require multi-dimensional approach to meet a plethora of needs including jobs, housing, and education while also addressing criminogenic factors, safety risks, and court orders to balance accountability and

rehabilitation. All these factors, in addition to behavioral health, impact our ability to supervise these populations safely and successfully.

Finally, it is inaccurate to assume that behavioral health needs are not already taken into account in CCP planning and resources and it is important to remember that funding for behavioral health needs of the justice population is not singularly contained within CCP funding. In fact, the state made changes to the Affordable Care Act (ACA) at the time and there are many other funding sources since, that have been identified for this population's behavioral health and substance use disorder needs. The very purpose of probation is to align all of the needs, not elevate one over another in order to take on the job that was previously handled by the state. The CCP plays a critical role in coordinating local responses to address these many factors that not only serve the Realigned population but do so with the equally important outcome of public safety. ... Placing other initiatives into this process as contemplated in this bill, will by definition redirect attention from the original purpose of the CCP while ignoring all other planning and funding courses intended specifically for behavioral health treatment.

Setting forth a redefined purpose of CCPs is not integration, it is redirection. ... Repurposing this important planning process will have the impact of subordinating public safety to only one of the many needs of the realigned population.

-- END --