
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1056 **Hearing Date:** June 30, 2015
Author: Atkins
Version: May 21, 2015
Urgency: No **Fiscal:** Yes
Consultant: ALA

Subject: *Proposition 47: Second Chance Program*

HISTORY

Source: Author

Prior Legislation: None

Support: All of Us or None; The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO; The Arc and United Cerebral Palsy California Collaboration; Area Congregations Together; Berkeley City Council; C & C Development Co.; California Association of Code Enforcement Officers; California Attorneys for Criminal Justice; California Building Industry Association; California Catholic Conference of Bishops; California College and University Police Chiefs Association; California Council of Community Mental Health Agencies; California Labor Federation; California Narcotic Officers Association; California Police Chiefs Association; California Rural Legal Assistance Foundation; California State Association of Counties; California State Council of the Service Employees International Union (SEIU); Californians for Safety and Justice; Christian Church Homes; Circulate San Diego; City Heights Community Development Corporation; City of Los Angeles; City of Torrance; City of West Hollywood; Community Action North Bay; Community Housing Opportunities Corporation; Community HousingWorks; Corporation for Supportive Housing; County Behavioral Health Directors Association; County Welfare Directors Association of California; Drug Policy Alliance; East Bay Housing Organizations; Friends Committee on Legislation of California; Girls Think Tank; The Hampstead Companies; Highridge Costa Investors, LLC; Housing California; Hunger Advocacy Network; Iglesia Adventista del Septimo Dia; Jewish Family Service of San Diego; League of California Cities; Legal Services for Prisoners with Children; LINC Housing; Los Angeles Community Action Network; Los Angeles County Board of Supervisors (if amended); MAAC; Mental Health America of California; Monterey County Board of Supervisors; National Alliance on Mental Illness California; National Association of Social Workers, California Chapter; National Center for Youth Law; Non-Profit Housing Association of Northern California; Northern California Community Loan Fund; Pacific Clinics; PATH; Rural Smart Growth Task Force; St. Anthony Foundation; San Diego Housing Federation; San Diego and Imperial Counties Labor Council; San Francisco Mayor Edwin Lee; Santa Clara County Board of Supervisors; Satellite Affordable Housing Associates; South Bay Community Services; Southern California Association of NonProfit Housing;

TransForm; Wakeland Housing and Development Corporation; Western Center on Law and Poverty; Western Regional Advocacy Project; numerous individuals

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to enact the "Second Chance Program," relating to savings resulting from the Passage of Proposition 47, the "Safe Neighborhoods and Schools Act," in November of 2014, as specified.

Current law reflects the provisions of Proposition 47, also known as the Safe Neighborhoods and Schools Act, which was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services, as specified. The initiative also made additional changes to criminal laws. (See Legislative Analyst's Office analysis of Proposition 47, <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.)

Current law, as enacted by Proposition 47, requires that by August 15 of each fiscal year beginning in 2016, the Controller shall disburse moneys deposited in the Safe Neighborhoods and Schools Fund as follows:

- 1) Twenty five percent to the State Department of Education, to administer a grant program to public agencies aimed at improving outcomes for public school pupils in kindergarten and grades 1 to 12, inclusive, by reducing truancy and supporting students who are at risk of dropping out of school or are victims of crime.
- 2) Ten percent to the California Victim Compensation and Government Claims Board, to make grants to trauma recovery centers to provide services to victims of crime pursuant to Section 13963.1 of the Government Code.
- 3) Sixty five percent to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems. (Government Code § 7599.2(a).)

Current law requires that, for each of these programs, the agency responsible for administering the programs shall not spend more than 5 percent of the total funds it receives from the Safe Neighborhoods and Schools Fund on an annual basis for administrative costs.

Current law requires the controller to conduct an audit of these grant programs "to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public," as specified.

Current law requires that the funding established pursuant to this act "be used to expand programs for public school pupils in kindergarten and grades 1 to 12, inclusive, victims of crime,

and mental health and substance abuse treatment and diversion programs for people in the criminal justice system. These funds shall not be used to supplant existing state or local funds utilized for these purposes.”

Current law provides that local agencies are not obligated to provide programs or levels of service described in these provisions above the level for which funding has been provided.

“Second Chance Program”

This bill would enact the “Second Chance Program,” (“Program”) with the following features and requirements:

Purpose and Limitations

This bill would provide that the purpose of the Program “is to build safer communities by investing in community-based programs, services, and initiatives for formerly incarcerated individuals in need of mental health and substance use treatment services.”

This bill would provide that the Program “shall be restricted to supporting mental health treatment, substance use treatment, and diversion programs for persons in the criminal justice system, with an emphasis on programs that reduce recidivism of persons convicted of less serious crimes, such as those covered by the Safe Neighborhoods and Schools Act of 2014, and those who have substance use and mental health problems.”

Administration

This bill would provide that the Board of State and Community Corrections (“BSCC”) shall administer the Program.

This bill would define certain terms, as specified.

Establishment of “Second Chance Fund”

This bill would create the “Second Chance Fund” in the State Treasury.

This bill would require BSCC to be responsible for administering the fund.

This bill would provide that “moneys in the fund are hereby continuously appropriated without regard to fiscal year for the purposes of” its provisions.

This bill would require BSCC to “deposit the moneys disbursed to it” into the Second Chance Fund, as specified.

This bill would provide that the “Second Chance Fund may receive moneys from any other federal, state, or local grant, or from any private donation or grant, for the purposes of this article.”

This bill would provide that the BSCC shall not spend more than 5 percent annually of the moneys in the fund for administrative costs.

Grant Program

This bill would require the BSCC to “administer a competitive grant program to carry out the purposes of this article that focuses on community-based solutions for reducing recidivism. The grant program shall, at minimum, do all of the following:

- 1) Restrict eligibility to proposals designed to serve people who have been arrested, charged with, or convicted of criminal offense and have a history of mental health or substance use disorders.
- 2) Restrict eligibility to proposals that offer mental health services, substance use disorder treatment services, misdemeanor diversion programs, or some combination thereof.
- 3) Restrict eligibility to proposals that have a public agency as the lead applicant.

Committee to Develop Guidelines for Grant Program

This bill would require the BSCC to “create a committee to develop guidelines for administration of the grant program, consistent with the purposes of this article.”

This bill would require this committee to “adopt guidelines for the submission of proposals, including threshold or scoring criteria, or both, that do all of the following:

- 1) Prioritize proposals that advance principles of restorative justice while demonstrating a capacity to reduce recidivism.
- 2) Prioritize proposals that leverage other federal, state, and local funds or other social investments, such as the following sources of funding:
 - a) The Drug Medi-Cal Treatment Program (22 Cal. Code Regs. 51341.1, 51490.1, and 51516.1).
 - b) The Mental Health Services Act, enacted by Proposition 63 at the November 2, 2004, general election, as amended.
 - c) Funds provided for in connection with the implementation of Chapter 15 of the Statutes of 2011.
 - d) The Community Corrections Performance Incentives Act (Stats. 2009, Ch. 608; Chapter 3 (commencing with Section 1228) of Title 8 of Part 2).
 - e) The tax credits established pursuant to Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code.
 - f) The federal Department of Housing and Urban Development funds, such as the Emergency Solutions Grant program (42 U.S.C. Sec. 11371 et seq.).
 - g) The federal Department of Veterans Affairs Supportive Services for Veteran Families program (38 U.S.C. Sec. 2044).
 - h) Social Innovation Funds established by the Corporation for National and Community Service pursuant to Section 12653k of Title 42 of the United States Code.
 - i) The Edward Byrne Memorial Justice Assistance Grant Program (42 U.S.C. Sec. 3750 et seq.).
- 3) Prioritize proposals that provide for all of the following:
 - a) Mental health services, substance use disorder treatment services, misdemeanor diversion programs, or some combination thereof.

- b) Housing-related assistance that utilizes evidence-based models, including, but not limited to, those recommended by the federal Department of Housing and Urban Development. Housing-related assistance may include, but is not limited to, the following:
 - i. Financial assistance, including security deposits, utility payments, moving-cost assistance, and up to 24 months of rental assistance.
 - ii. Housing stabilization assistance, including case management, relocation assistance, outreach and engagement, landlord recruitment, housing navigation and placement, and credit repair.
 - c) Other community-based supportive services, such as job skills training, case management, and civil legal services.
- 4) Prioritize proposals that leverage existing contracts, partnerships, memoranda of understanding, or other formal relationships to provide one or more of the services prioritized in paragraph (3).
 - 5) Prioritize proposals put forth by a public agency in partnership with a philanthropic or nonprofit organization.
 - 6) Prioritize proposals that promote interagency and regional collaborations.
 - 7) Consider ways to promote services for people with offenses identical or similar to those addressed by the Safe Neighborhoods and Schools Act of 2014, without precluding assistance to a person with other offenses in his or her criminal history.
 - 8) Consider geographic diversity.
 - 9) Consider appropriate limits for administrative costs and overhead.
 - 10) Consider proposals that provide services to juveniles.
 - 11) Permit proposals to expand the capacity of an existing program and prohibit proposals from using the fund to supplant funding for an existing program.

This bill would require that this committee “consist of 13 members and shall be composed as follows:

- 1) A formerly incarcerated individual who has received or is receiving mental health or substance use disorder treatment.
- 2) A family member of a current or formerly incarcerated individual.
- 3) A mental health expert, appointed by the Senate Committee on Rules.
- 4) A substance use disorders expert, appointed by the Speaker of the Assembly.
- 5) A housing programs expert.
- 6) An expert on homelessness.
- 7) Two community-based supportive service providers with experience in providing services to formerly incarcerated individuals and reducing recidivism.
- 8) A community supervision expert.
- 9) An academic expert with a history of research and expertise on the best practices for reducing recidivism.
- 10) A member of the board.
- 11) A public agency administrator.
- 12) An additional expert, to be selected by the board.

Legislative Findings and Declarations

This bill states legislative findings and declarations that this act furthers the intent of the Safe Neighborhoods and Schools Act enacted by Proposition 47 at the November 4, 2014, general election.”

This bill states additional legislative findings and declarations concerning Proposition 47, mental health issues and substance use disorders among the offender population, the importance of prioritizing “projects that combine mental health services, substance use treatment services, housing, housing-related job assistance, job skills training, and other community-based supportive services will help the state meaningfully reduce recidivism” and “the use of restorative justice principles in addressing recidivism,” as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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:

California voters approved Proposition 47, known as the Safe Neighborhood and Schools Act of 2014. The measure was enacted to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for non-serious, nonviolent crime, and to invest the savings generated from Proposition 47 into prevention and support programs. AB 1056 provides important fiscal and policy direction by making the highest and best use of the savings accruing from Proposition 47, directing them toward diversion and collaborative programs that address the root causes of recidivism of those formerly incarcerated: the urgent need for housing, mental health services, and substance abuse treatment.

Research has shown that people in the criminal justice system disproportionately suffer from mental health issues and substance use disorders. Nationally, over half of people in prisons or jails have experienced a mental health issue within the last year, and over half of the women in jail and 44% of men in jail have a drug or alcohol dependency.

Due to their criminal backgrounds, people in the criminal justice system and formerly incarcerated individuals have difficulty securing housing and employment upon leaving incarceration. These challenges are compounded for people who live with mental health issues or substance abuse disorders.

2. What This Bill Would Do

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 made a number of changes in criminal penalties and provided that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. (See Legislative Analyst's Office analysis of Proposition 47, <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.) Proponents of Proposition 47 submitted in part:

Proposition 47 is sensible. It focuses law enforcement dollars on violent and serious crime while providing new funding for education and crime prevention programs that will make us all safer. . . . Proposition 47 stops wasting money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions of taxpayer funds every year. . . . (Proposition 47) dictates the massive savings to crime prevention strategies in K–12 schools, assistance for victims of crime, and mental health treatment and drug treatment to stop the cycle of crime.

As explained above, savings attributed to the sentencing changes in Proposition 47 are split, with 25 percent for education, 10 percent for victim services, and 65 percent for a “grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems.”

This bill would establish a grant program and process for the Proposition 47 savings – the “Safe Neighborhoods and Schools Fund” [SNSF’]) to be allocated by the BSCC. The key features of this bill include enumerating a number of prioritized proposal features, and codifying the membership of a committee tasked with developing guidelines for the program.

In February of this year the Legislative Analyst Office stated that based “on historic sentencing practices, we estimate that the total annual deposit into the SNSF will likely range from \$100 million to \$200 million beginning in 2016–17. Because the state savings from the resentencing provisions in the measure are temporary in nature, the deposit in future years could be somewhat smaller, but will still likely fall within the \$100 million to \$200 million range. . . .

Although Proposition 47 states that the monies in the SNSF shall be allocated to particular departments based on specific percentages for particular purposes, the Legislature has the opportunity to provide some direction on how the funds are spent in a manner that furthers the purpose of the proposition. In particular we have identified a couple of key policy questions for legislative consideration. Specifically, the Legislature could weigh in on (1) how the individual departments should distribute the funds and (2) how much state oversight to provide to ensure that the funds are being spent effectively. In our view, the appropriate answers to these questions will vary depending on the program area. To the extent the Legislature wishes to weigh in on these issues, it has a couple of options. For example, the Legislature could hold hearings and ask the administration to present its plans for allocating the funds. The Legislature could also pass legislation directing the administration to allocate the funds consistent with its priorities. (We would note that, depending on the specific language, it is possible that such legislation could require a two-thirds majority vote of the Legislature, based on the provisions of the proposition.) In order to give the departments and potential grant recipients time to plan, we recommend that the Legislature begin addressing these issues in the near term. . . . (*The 2015-16 Budget: Implementation of Proposition 47* (Feb. 17, 2015) Legislative Analyst’s Office.)

3. Priorities

This bill would establish a number of prioritized programs and enumerated considerations for the Proposition 47 funding under the BSCC:

- Proposals that advance principles of restorative justice while demonstrating a capacity to reduce recidivism.

- Proposals that leverage other federal, state, and local funds or other social investments.
- Proposals that provide for mental health services, substance use disorder treatment services, and misdemeanor diversion programs.
- Proposals that provide housing-related assistance that utilizes evidence-based models.
- Proposals that provide other community-based supportive services, such as job skills training, case management, and civil legal services.
- Proposals that leverage existing contracts, partnerships, memoranda of understanding, or other formal relationships to provide one or more of the prioritized services.
- Proposals put forth by a public agency in partnership with a philanthropic or nonprofit organization.
- Proposals that promote interagency and regional collaborations.
- Consider ways to promote services for people with offenses identical or similar to those addressed by the Safe Neighborhoods and Schools Act of 2014, without precluding assistance to a person with other offenses in his or her criminal history.
- Consider geographic diversity.
- Consider appropriate limits for administrative costs and overhead.
- Consider proposals that provide services to juveniles.
- Permit proposals to expand the capacity of an existing program and prohibit proposals from using the fund to supplant funding for an existing program.

WOULD THESE PRIORITIES FURTHER THE INTENT OF PROPOSITION 47?

4. Committee

In 2011, a longstanding practice of the BSCC and its predecessor entities (the Corrections Standards Authority and the Board of Corrections) to seek the input of outside experts and stakeholders through executive steering committees was codified. Penal Code section 6024 provides:

The board shall regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Toward this end, the board shall seek to ensure that its efforts (1) are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, (2) include the participation of those who must implement a board decision and are impacted by a board decision, and (3) promote collaboration and innovative problem solving consistent with the mission of the board. The board may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board.

The BSCC (and its predecessors) has employed this process in numerous contexts, including the promulgation of regulations and the development of requests for proposals for grant programs. In addition, in 2013 AB 1050 (Dickinson) was enacted to require the BSCC to develop definitions of certain key terms, including recidivism and, in doing that work, to “consult with” specified stakeholders and experts. (Penal Code sec. 6027.)

This bill would require BSCC to “create a committee to develop guidelines for administration of the grant program,” and specifies 13 members of the committee.

SHOULD THE MEMBERSHIP OF THE COMMITTEE DEVELOPING GUIDELINES FOR THIS PROGRAM BE CODIFIED?

5. Opposition

The California State Sheriffs’ Association, which opposes this bill, states in part:

Unfortunately, we are concerned about the portion of the bill that statutorily mandates who shall serve on the executive steering committee (ESC) of the Board of State and Community Corrections (BSCC) that will ultimately be charged with addressing the BSCC’s role in overseeing the grant program at issue. The BSCC is well-versed in the creation of ESC’s and, in fact, the statute governing the BSCC speaks to this process in detail. . . .

Given existing law governing this issue, we feel it is inappropriate to legislatively set the composition of an ESC. As such, we must respectfully oppose this measure unless it is amended.

-- END --