
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1104 **Hearing Date:** July 11, 2023
Author: Bonta
Version: June 13, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Corrections and rehabilitation: sentencing*

HISTORY

Source: Transformative In-Prison Workgroup

Prior Legislation: AB 2590 (Weber), Chapter 696, Statutes of 2016

Support: Asian Prisoners Support Committee; Boundless Freedom Project; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Defy Ventures; Friends Committee on Legislation of California; Grip Training Institute; Initiate Justice (UNREG); KALW Public Media; Kid (Creating Awareness Together) C.A.T.; Legal Services for Prisoners with Children; Prison Yoga Project; Root & Rebound; Uncommon Law; William James Association

Opposition: None known

Assembly Floor Vote: 54 - 15

PURPOSE

The purpose of this bill is to state that the deprivation of liberty due to incarceration, in and of itself, satisfies the punishment aspect of sentencing, and that the purpose of incarceration is to rehabilitate a person so they can be successfully reintegrated into the community

Existing law reaffirms a commitment to reducing recidivism among criminal offenders by reinvesting criminal justice resources to support community-based corrections programs and evidence-based practices. (Penal Code § 17.5.)

Existing law declares that strategies such as standardized risk and needs assessments, transitional housing, treatment, medical and mental health services, and employment, have been demonstrated to significantly reduce recidivism among offenders in other states. (Penal Code, § 17.7.)

Existing law finds and declares that the purpose of sentencing is public safety, which is achieved through punishment, rehabilitation, and restorative justice. (Penal Code § 1170 (a)(1).)

Existing law states that a sentence including incarceration is best served by terms proportionate to the seriousness of the offense and uniformity for all similarly situated offenders. (Penal Code § 1170 (a)(1).)

Existing law finds and declares that incarcerated persons should have educational, rehabilitative, and restorative justice programs available so that their behavior may be modified and they are prepared to reenter the community. (Penal Code, § 1170 (a)(2).)

Existing law provides that CDCR must require every able-bodied prisoner to work as many hours of faithful labor each and every days during their term of imprisonment. (Penal Code § 2700.)

Existing law states that every able-bodied incarcerated individual in prison is obligated to work as assigned by CDCR. (Cal. Code. Regs., tit. 15, § 3040 (a).)

Existing law states that an assignment may be up to a full day of work, or may include Rehabilitative Programs managed by the Division of Rehabilitative Programs (DRP), or a combination of work or other programs. (Cal. Code. Regs., tit. 15, § 3040 (a).)

Existing law provides that any able-bodied inmate may be assigned to perform any work deemed necessary to maintain and operate the institution and its services in a clean, safe and efficient manner. Operational needs may always override a program assignment. (Cal. Code. Regs., tit. 15, § 3040 (a).)

This bill states that the Legislature finds and declares, in recognition of previous hyper-punitive policies that led to mass incarceration, that effective rehabilitation increases public safety and builds stronger communities, among other things.

This bill provides that when a sentence includes incarceration, the deprivation of liberty in and of itself satisfies the punishment aspect of sentencing and that the purpose of incarceration is rehabilitation and successful community reintegration through education, treatment, and restorative justice programs.

This bill declares that community-based organizations (CBOs) are integral to ensuring all incarcerated persons in state prisons have access to rehabilitative programs and that the Department of Corrections and Rehabilitation (CDCR) must maintain a mission statement incorporating such.

This bill provides that the primary objective of adult incarceration in the Department of Corrections and Rehabilitation shall be to facilitate the successful reintegration of the individuals in the department's care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, and rehabilitative and restorative justice programs, all in a safe and humane environment.

COMMENTS

1. Need for This Bill

According to the author:

My bill emphasizes the importance of incarcerated individuals being afforded opportunities for restorative justice, trauma healing, education, and participation in community-based programming designed to assist in successful reintegration after release. Community based organizations provide an essential lifeline to

incarcerated people. Its time our laws reflect how much we value and prioritize their contribution to successful rehabilitation and healing. With AB 1104 we are continuing to move away from the failed policies of the past, and toward a healing and restorative future inside of California's prisons.

2. Incarceration and Rehabilitation

Prior to the passage of AB 2590 (Weber) Chapter 696, Statutes of 2015-2016, California law declared that the purpose of imprisonment for crime was punishment. AB 2590 (Weber), among other things, amended the law to state that the purpose of sentencing is public safety, which is achieved through punishment, rehabilitation, and restorative justice. This change in legislative purpose was based on research that shows recidivism can be reduced through prison-based rehabilitation programs, and that approximately 95% of prisoners will return to their communities. (National Institute of Justice (NIJ). *Reentry Research at NIJ: Providing Robust Evidence for High-Stakes Decision-Making*. (Apr. 11, 2022) <<https://nij.ojp.gov/topics/articles/reentry-research-nij-providing-robust-evidence-high-stakes-decision-making#noteReferrer1>> [as of Mar. 20, 2023]; US Department of Justice (US DOJ) *Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons*. (Last Updated Mar. 6, 2017) <https://www.justice.gov/archives/prison-reform#_ftnref1> [as of Mar. 20, 2023].)

Although the number of inmates housed in prisons has decreased in years, the recidivism rates have remained high, hovering at around 50% over the past decade. (State Auditor. *California Department of Corrections and Rehabilitation: Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs*. (hereafter *CDCR Poor Rehabilitation Practices*) (Jan. 2019) <<https://www.auditor.ca.gov/reports/agency/22>> at p. 1 [as of Mar. 20, 2023].) A report by the California State Auditor's Office (State Auditor) set forth concerns re shortcomings in CDCR's rehabilitation programs. (*Id.* at 1-3.) The report stated how staffing shortfalls, failures to use evidence-based practices, and failures to properly identify and address rehabilitative needs were all factors leading to little change in recidivism rates. (*Id.* at 1, 19, 23.)

This bill, in part, would state that the deprivation of liberty resulting from incarceration satisfies the punitive aspect of a defendant's sentence, and states that the purpose for incarceration is actually for rehabilitation and successful reentry. A meta-analysis of high quality research studies showed that, on average, incarcerated individuals who participated in correctional education programs had 43% lower odds of recidivating. (Research and Development (RAND) Corporation. *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*. (2013) <https://www.rand.org/pubs/research_reports/RR266.html> at p. xvi [as of Mar. 20, 2023].) This translated into a reduction in the risk of recidivating of 13% between those who participated in correctional education programs versus those who did not. (*Ibid.*)

3. CBOs and Reentry

This bill declares CBOs are an integral part of successful rehabilitation. There is evidence that CBOs more frequently emphasize elements that lead to successful reentry than government-based organizations. (Zhang et al. *Successful Reentry: A Community-Level Analysis*. (Dec. 2019) <https://iop.harvard.edu/sites/default/files/sources/program/IOP_Policy_Program_2019_Reentry_Policy.pdf> at p. 19 [as of Mar. 20, 2023].) Government-based organizations generally tend to

focus on work and employability, whereas CBOs emphasize larger issues of access to social services like healthcare, housing, and economic development. (*Id.* at 19-20.)

4. Primary objective to facilitate successful reintegration

This bill provides that the primary objective of adult incarceration in the Department of Corrections and Rehabilitation shall be to facilitate the successful reintegration of the individuals in the department's care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, and rehabilitative and restorative justice programs, all in a safe and humane environment, as set forth in the findings and declarations that are in this bill

5. Argument in Support

Initiate Justice supports this bill stating:

In the 2015-2016 session, AB 2590 (Weber) suggested a move away from punitive justice toward a more restorative justice approach and directed the CDCR to create a mission statement in line with those stated goals. The CDCR now maintains a non-punitive mission statement, but the Penal Code has not been adjusted to reflect this momentous change in mission, value, and goals.

The Penal Code does not provide language clarifying the purpose of incarceration despite the principles and values embodied and enacted by the Legislature, which indicate that prisons are sites for rehabilitation and not additional unfettered punishment. This lack of definition doesn't reflect the expressed will, values, or expectations of the Legislature.

Penal Code section 1170 also fails to reflect the value and role of Community-Based Organization (CBO) provided rehabilitative programs in California's prisons. CBOs fill a crucial gap by providing the incarcerated population with reentry support, skills and workforce development as well as trauma healing and restorative justice programs. These critical in-prison programs make rehabilitation and personal transformation possible, improve reentry outcomes, make prisons safer, and have the added benefit of providing short and long term savings to the State. The presence of CBO programs in prison also signals a move away from the isolating and punitive nature of incarceration toward a model driven by the pursuit of individual and societal wellbeing. Creating an explicitly non-punitive approach to incarceration is one of the key building blocks for successful return to communities and families.

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