
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 268 **Hearing Date:** July 11, 2023
Author: Weber
Version: June 28, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Board of State and Community Corrections*

HISTORY

Source: San Diego County Board of Supervisors

Prior Legislation: AB 2343 (Weber), vetoed in 2022
SB 74 (Comm. on Budget & Fiscal Review), Ch. 30, Stats. 2013
SB 92 (Comm. on Budget & Fiscal Review), Ch. 36, Stats. 2011

Support: ACLU California Action; American Federation of State, County and Municipal Employees, AFL-CIO California; California Public Defenders Association; Depression and Bipolar Support California; Los Angeles County District Attorney's Office

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 62 - 16

PURPOSE

The purpose of this bill is to require the Board of State and Community Corrections (BSCC) to develop standards for mental health care in local correctional facilities, beginning on July 1, 2024.

Existing law establishes the BSCC. (Pen. Code, § 6024, subds. (a).)

Existing law provides that the mission of the BSCC is to provide 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. Provides that this mission 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 as of July 1, 2013, the BSCC consists of 13 members, as specified. (Pen. Code, § 6025, 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 corrections policies, practices, capacities, and needs. (Pen. Code, § 6027, subd. (a).)

Existing law requires the BSCC to establish minimum standards for local correctional facilities. Requires the BSCC to review those standards biennially and make any appropriate revisions. (Pen. Code, § 6030, subd. (a).)

Existing law requires that the minimum standards include, but not be limited to, health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training. (Pen. Code, § 6030, subd. (b).)

Existing law requires the BSCC to seek the advice of the State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested person in establishing minimum standards related to health and sanitary conditions. (Pen. Code, § 6030, subd. (g)(1).)

Existing law requires the BSCC to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. (Welf. & Inst. Code, § 210.)

Existing law requires the BSCC to inspect each local detention facility in the state biennially, at a minimum. (Pen. Code, § 6031, subd. (a).)

This bill increases the number of members on the BSCC to 15 beginning on July 1, 2024. Adds a the Secretary of Health and Human Services, or their designee who has a medical degree, and a licensed mental or behavioral health care provider, both to be appointed by the Governor, and subject to confirmation by the Senate Rules Committee.

This bill requires the board to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities that meet or exceed the standards for health services in jails established by the National Commission on Correctional Health Care commencing July 1, 2024. Requires the minimum standards to include the following:

- Requires safety checks of incarcerated persons to be sufficiently detailed to determine the safety and well-being of the incarcerated person, and that they are not in distress. Does not require facility staff to disturb or wake incarcerated persons during sleeping hours.
- Requires correctional officers to be certified in cardiopulmonary resuscitation (CPR) and to be required, when safe and appropriate to do so, to begin CPR on a nonresponsive person without obtaining approval from supervisors or medical staff.
- Requires jail supervisors to conduct random audits of safety checks which include a review of logs and video footage, if available, to ensure that safety checks are properly performed.
- Requires in-service training of correctional officers to include no fewer than four hours of training on mental and behavioral health annually. Requires the training requirements prescribed to be developed by BSCC standards of training for corrections.
- Requires mental health screening or evaluation conducted at booking or intake to be conducted by a qualified mental health care professional, if available. Requires mental health screening or evaluation that is conducted by anybody other than a qualified mental health care professional to be reviewed by a qualified mental health care professional as soon as reasonably practicable.

- Requires jail staff to review the medical and mental health history and the county electronic health record, if available, of any person booked or transferred into the jail to determine any history of mental health issues.

This bill provides defines “qualified mental health care professional” as a physician, physician assistant, nurse, nurse practitioner, psychologist licensed by the Board of Psychology, registered psychologist, postdoctoral psychological assistant, postdoctoral psychology trainee, as specified, marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, associate professional clinical counselor, or other person who, by virtue of their credentials, is permitted by law to evaluate and care for patients, and who, by virtue of their credentialing, or in addition to their credentialing, has received instruction, training, or expertise in identifying and interacting with persons in need of mental health services.

This bill includes uncodified legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

There’s a crisis of incarcerated people dying behind bars. The California State Auditors report revealed disturbing facts regarding the inadequate statewide standards within county jails. Between 2006-2020 there were 185 in-custody deaths for San Diego County, 421 death in Los Angeles, 104 deaths in Riverside County, 124 deaths in San Bernardino. Many of these deaths were preventable. The California Board of State and Community Corrections is tasked with establishing the minimum standards for jail systems to follow, and it is time to update those practices to ensure we are preventing the loss of life due to inadequate policies and care for individuals in custody.

AB 268 outlines and task the Board of State and Community Corrections to revise their policies to align with best practices related to performing intake health evaluations, training, conducting safety checks, and addressing the other deficiencies to reduce suicide risk and related health needs.

2. BSCC

The BSCC was established in 2012 and is responsible for providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile justice systems. The BSCC has four primary responsibilities: setting standards for and inspecting local detention facilities; setting standards for the selection and training of local correctional staff; administering various grant programs related to recidivism and reduction strategies; and administering the state’s construction financing program for local detention facilities. The 2022-2023 budget provides the BSCC with \$936 million to carry out those responsibilities. (<<https://www.ebudget.ca.gov/2022-23/pdf/Enacted/GovernorsBudget/5210/5227.pdf>>)

Current law requires the BSCC to maintain minimum standards for the construction and operation of local detention facilities inspect each local detention facility biennially to assess compliance with BSCC standards, and prepare, distribute, and publish inspection reports. Notably, although the BSCC is required to inspect local detention facilities to determine compliance with the standards and to report noncompliance, the BSCC is not authorized under state law to enforce the standards (e.g., by fining a local detention facility).

The BSCC's standards and inspection program is one of the primary ways that the state exercises oversight of local detention facilities. Growing concerns over conditions inside of the state's local detention facilities, including isolation of mentally ill inmates, violence, suicide, use of force, and lack of transparency have led to the introduction of a number of bills in recent years aimed at increasing transparency and accountability as they relate to county jails. In early 2020, Governor Newsom directed the BSCC to strengthen the state's oversight of county jails, and the BSCC has since developed an enhanced jail inspection process, which began in 2021. (<<https://www.bscc.ca.gov/wp-content/uploads/Info-Item-6-Targeted-Inspections-FINAL.pdf>>)

3. State Auditor's Report

This bill was introduced in response to a State Auditor report published last year on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department. (State Auditor, *San Diego County Sheriff's Department It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody* (February 3, 2022), Report 2021-109 <<http://auditor.ca.gov/pdfs/reports/2021-109.pdf>> [as of Jun. 23, 2023].) Between 2006 and 2020, 185 people died in San Diego County's jails—one of the highest totals among counties in the state. Due to the high number of in-custody deaths, the Joint Legislative Audit Committee requested an audit of the San Diego County Sheriff's Department. The report noted:

Significant deficiencies in the Sheriff's Department's provision of care to incarcerated individuals likely contributed to the deaths in its jails. For example, studies on health care at correctional facilities have demonstrated that identifying individuals' medical and mental health needs at intake—the initial screening process—is critical to ensuring their safety in custody. Nonetheless, our review of 30 individuals' deaths from 2006 through 2020 found that some of these individuals had serious medical or mental health needs that the Sheriff's Department's health staff did not identify during the intake process. (*Id.* at p. 1.)

The audit additionally revealed several instances of individuals who requested or required medical and mental health care and did not receive it at all or in a timely manner. (*Id.* at p. 2.) For example, one individual requested mental health services shortly after entering the jail. However, the intake nurse did not identify any significant mental health issues and determined that the individual did not qualify for an immediate appointment. The individual committed suicide two days later.

The audit also found that deputies performed inadequate safety checks to ensure the well-being of incarcerated persons. (*Ibid.*) State law requires hourly checks through direct visual observation, which is the department's most consistent means of monitoring for medical distress and criminal activity. The audit further found that some of deficiencies of the Sheriff's Department are the result of statewide corrections standards that are insufficient for maintaining the safety of incarcerated individuals. (*Id.* at pp. 2-3.) For example, regulations established by the BSCC do not explicitly require that mental health professionals perform the mental health

screenings during the intake process and do not describe the actions that constitute an adequate safety check.

The Auditor's report concluded with several key recommendations, including that the BSCC should require mental health evaluations to be performed by mental health professionals at intake, and that it should clarify and improve procedures for safety checks. (*Id.* at p. 56.) This bill requires the BSCC to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities, including mental health screenings by a qualified mental health professional at intake and sufficiently detailed regulations on safety checks.

4. AB 2343 Veto

AB 2343 (Weber), of the 2021-2022 Legislative Session, was substantially similar to this bill. In vetoing AB 2343, the Governor stated:

This bill would, commencing July 1, 2023, require the Board of State and Community Corrections (BSCC) to develop and adopt minimum mental health care standards for local correctional facilities and would add both a licensed healthcare provider and a licensed mental health provider to the Board.

BSCC has had a thirteen-member board since 2013. I am concerned that adding two members unnecessarily grows the board and could impede its ability to timely carry out its mission.

5. Argument in Support

The San Diego County Board of Supervisors, the bill's sponsor, writes:

The BSCC provides statewide leadership, coordination, and technical assistance to county jails and establishes standards for county jails and correctional officers. AB 268 would require the BSCC to develop and adopt standards of care for incarcerated persons with mental health issues in county jails, including requirements for training of correctional staff, requirements for mental health screening, and requirements for safety checks of at-risk incarcerated persons.

At the direction of the California State Joint Legislative Audit Committee, the Auditor of the State of California ('State Auditor') conducted an audit of the San Diego County Sheriff's Department ('Sheriff's Department') to determine the reasons for the high number of in-custody deaths. The State Auditor issued a report in February 2022 that raised concerns about systemic issues with the Sheriff's Department's policies and practices related to its provision of medical and mental health care and its performance of visual checks to ensure the safety and health of individuals in its custody.

To address the State Auditor's report, the San Diego County Board of Supervisors unanimously approved recommendations to sponsor state legislative action to ensure that the Sheriff's Department implements changes in accordance with the State Auditor's recommendations.

6. Argument in Opposition

According to the California State Sheriffs' Association:

Historically, we have had concerns with growing the size of the BSCC. We feel this board has an appropriate current composition and worry that adding to it, notwithstanding the importance of the delivery of medical and mental health care services to incarcerated persons, will dilute the operational efficacy of the body. Governor Newsom noted this concern in his veto of a similar bill you authored last year when he wrote: "BSCC has had thirteen-member board since 2013. I am concerned that adding two members unnecessarily grows the board and could impede its ability to timely carry out its mission."

Further, while the BSCC is the appropriate venue for setting minimum standards for detention facilities, AB 268 goes too far by installing specific standards and requirements in statute. BSCC board members, practitioners, and other stakeholders participate in a near-constant revision of Title 15 standards for both adult and juvenile incarcerated populations. This process generally results in well-negotiated and achievable standards that are subject to the scrutiny and review of experts and those who will be asked to implement and abide by them. Statutorily setting these standards interferes in this process and will preclude the BSCC and those it oversees from being nimble when changes are necessary.

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