
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 293 **Hearing Date:** June 9, 2015
Author: Levine
Version: June 1, 2015
Urgency: Yes **Fiscal:** Yes
Consultant: LT

Subject: *Prisons: Inmate Threats*

HISTORY

Source: Author

Prior Legislation: None

Support: California Correctional Peace Officers Association; American Federation of State, County and Municipal Employees, AFL-CIO; California Correctional Supervisors Organization; Service Employees International Union, Local 1000

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to establish a statewide policy for the handling of threats made by inmates, wards, or family members of inmates and wards, against California Department of Corrections and Rehabilitation (CDCR) staff.

Existing law creates in state government CDCR, to be headed by a secretary, who is appointed by the Governor, subject to Senate confirmation, and serves at the pleasure of the Governor. CDCR consists of Adult Operations, Adult Programs, Health Care Services, Juvenile Justice, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board. (Government Code § 12838 (a).)

Existing law authorizes the Director of CDCR to prescribe and amend rules and regulations for the administration of the prisons and the administration of the parole of persons, except as specified. All rules and regulations must, to the extent practical, be stated in language that is easily understood by the general public. (Penal Code § 5058 (a).)

Existing law requires each state prison under CDCR's jurisdiction to develop a Mutual Aid Escape Pursuit Plan and Agreement with local law enforcement agencies. The plan, together with any supporting information, must be submitted for annual review to the city council of the city containing, or nearest to, the institution and to the county board of supervisors of the county containing the prison. Nothing in this section requires the CDCR to disclose any information which may threaten the security of an institution or the safety of the surrounding community. (Penal Code § 5004.5.)

This bill would require CDCR to establish a statewide policy on operational procedures for handling threats made by inmates, wards, or by the family members of inmates and wards, against CDCR staff.

This bill would require the policy to include methods to ensure that CDCR staff members are advised of threats made against them by inmates, wards, or the family members of inmates and wards.

This bill would require that all threats against CDCR staff made by inmates, wards, or the family members of inmates and wards be thoroughly investigated.

This bill would require a copy of the statewide policy be made accessible to members of the public, upon request.

This bill would not prohibit an individual institution within CDCR from developing a more detailed notification procedure for advising staff members of threats made against them. If an individual institution has a more detailed policy, the policy would be required to be accessible to every member of the staff of the institution.

This bill would require CDCR to provide training on the policy developed pursuant to this section, as specified.

This bill would take effect immediately.

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. Need for This Bill

The author states:

Under existing law, there is no requirement that CDCR develop statewide notification procedures for handling death threats. Moreover, there is no requirement that individual institutions have policies. Of the institutions that do currently have policies, there is no requirement that those policies are made available to ensure proper procedure is followed and that notification occurs and threats are fully investigated.

The current situation potentially puts the peace officer, the officer’s family, and the officer’s community at risk.

AB 293 seeks to improve safety by creating uniformity among our correctional institutions and consistency for investigating threats.

2. Effect of This Legislation

There is currently no statewide notification policy for inmate threats. In fact CDCR’s Division of Adult Institutions (DAI) conducted a survey of its 35 adult institutions. The survey inquired whether the institutions had established policies and procedures in place should an inmate threaten an employee, either verbally or non-verbally. Out of the 35 institutions surveyed, 28 institutions had various established local policies and procedures and the remaining seven institutions were determined not to have localized procedures. According to supporters, this bill closes the gap between varying policies and procedures among correctional institutions for investigating threats against CDCR staff, by creating a statewide policy for responding to threats made against CDCR staff. The procedure requires that staff is advised of threats made against them and that threats are thoroughly investigated.

3. Argument in Opposition

Legal Services for Prisoners with Children states, in part:

While it would be helpful for CDCR to establish uniform, statewide policies, we feel that the Legislature could be much more proactive. Rather than let CDCR draft its own policy, the Legislature should use its authority to draft one that is sensible and fair. Letting CDCR draft its own disciplinary practices overlooks the important mandate that the Legislature has to govern California's prison system.

Threats made against correctional officers are often unsubstantiated. In disciplinary hearings, it is often the officer's word against the inmates. This bill, by not containing sufficient provisions, would allow prison officials to use criminal threats as a way of seeking disciplinary retaliation against California prisoners. This bill would be improved if it set forth protections for inmates, such as strict evidentiary criteria in disciplinary hearings and limits on the type of severity of punishment (if someone is found guilty). Furthermore, this bill should clearly state that prisoners cannot be punished or have privileges taken away if it is found that their family members threatened a correctional staff member.

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