
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 862 **Hearing Date:** July 11, 2023

Author: Bauer-Kahan

Version: February 14, 2023

Urgency: No

Fiscal: Yes

Consultant: SJ

Subject: *County jails: recidivism: reports*

HISTORY

Source: Author

Prior Legislation: AB 731 (Bauer-Kahan), vetoed in 2022
AB 2483 (Bauer-Kahan), vetoed in 2020
AB 152 (Gallagher), held in Assembly Appropriations in
AB 2521 (Hagman), held in Senate Appropriations in 2014
AB 1050 (Dickinson), Ch. 270, Stats. 2013

Support: California Public Defenders Association; Ella Baker Center for Human Rights;
Initiate Justice

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 67 - 0

PURPOSE

The purpose of this bill is to require county sheriffs to compile and submit data to the Board of State and Community Corrections (BSCC) on rehabilitative opportunities for incarcerated individuals.

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

Existing law requires the BSCC's 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 corrections policies, practices, capacities, and needs. (Pen. Code, § 6027, subd. (a).)

Existing law authorizes BSCC to do either of the following:

- Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,
 - Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants.
- (Pen. Code, § 6027, subd. (c).)

This bill requires the sheriff in each county to compile and submit the following data to the BSCC:

- A list of all the educational opportunities provided in each county jail;
- A list of all of the rehabilitative opportunities provided in each county jail;
- A list of all the exercise opportunities in each county jail;
- The number of participants and the cost of administering these programs; and,
- The overall recidivism rates for each county jail.

This bill defines “recidivism” means that an individual received a new felony or misdemeanor conviction or probation violation within three years of their previous criminal conviction. Provides that for statistical purposes, any individual who is released from custody and reoffends be counted as part of the data.

This bill requires the BSCC to provide a report to the Legislature based upon the findings of the data collected on or before July 1, 2025.

This bill provides that its provisions will become inoperative on July 1, 2029 and repealed on January 1, 2030.

COMMENTS

1. Need For This Bill

According to the author:

AB 862 requires county jail data collection aimed at understanding the spending and effectiveness of the county's rehabilitation programs. Counties have an outsized role in the criminal justice system, and understanding their rehabilitation programming, especially after realignment, should be a priority. This information provides an opportunity for the legislature to make fully informed decisions on the best use of scarce funding, aimed at programs that show proven rates of reducing recidivism.

2. Recidivism Data

In 2011, AB 109 (Realignment) was enacted and shifted the management of lower-level felony offenders from state prison and the parole system to county jail and probation systems. Since that

time, much attention has been paid to the recidivism rates of both individuals who served their felony sentence in county jail and those who served their felony sentences in the state's prisons. Although there are different ways to measure recidivism, the state has adopted reconviction as its primary recidivism measure. (Public Policy Institute of California, *Realignment and Recidivism in California* (Dec. 2017), p. 9 available at <https://www.ppic.org/wp-content/uploads/r_1217mbr.pdf>.)

This bill requires every county sheriff to report the overall recidivism rates for each county jail, and defines recidivism as "an individual received a new felony or misdemeanor conviction or probation violation within three years of their previous criminal conviction." This definition is consistent with the BSCC's definition of recidivism. (BSCC, *Definitions of Key Terms*, p. 2 available at <<https://www.bscc.ca.gov/wp-content/uploads/AB-1050-Key-Term-Definitions.pdf>>.) This bill also specifies that any individual who is released from custody and reoffends may be counted as part of the recidivism data for statistical purposes. This appears to be consistent with the BSCC's definition of recidivism which provides that its definition "does not preclude other measures of offender outcomes... [which] may include new arrest, return to custody, criminal filing, violation of supervision, and level of offense (felony or misdemeanor)." (*Ibid.*)

This bill additionally requires each sheriff to report to the BSCC a list of all of the educational, rehabilitative, and recreational opportunities provided in each county jail as well as the number of participants and the cost of administering each of the programs.

3. AB 731

Apart from the timelines provided in the bill, this bill is identical to AB 731 (Bauer-Kahan) of the 2021-2022 legislative session which was vetoed. In vetoing the bill, Governor Newsom wrote:

This bill requires the sheriff in each county to compile and send extensive data to the Board of State and Community Corrections (Board) about educational and rehabilitative programs in county jail and their success rates in reducing recidivism. It further requires the Board to report to the legislature.

While I agree that data relating to the efficacy of local programs is important, this bill is overly broad and creates a large mandate, potentially costing the state millions of dollars. With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety and safety-net programs.

The Legislature sent measures with potential costs of well over \$20 billion in one-time spending commitments and more than \$10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process. For these reasons, I cannot sign this bill.

4. Argument in Support

The California Public Defender's Association writes:

AB 862 will require County Sheriffs to report the nature of their anti-recidivism programs, and those programs' success rates in reducing recidivism. Recidivism can be reduced through rehabilitation by addressing the criminogenic needs of individuals within the criminal justice system. Local Sheriffs are responsible for providing the services that address these individuals' needs. Looking at success rates will afford local and State decision makers with the knowledge necessary to efficiently allocate limited resources to those programs that best reduce recidivism and encourage rehabilitation.

5. Argument in Opposition

According to the California State Sheriffs' Association:

Sheriffs across the state provide meaningful rehabilitative programming to jail inmates with the desire to enhance formerly incarcerated persons' re-entry into society and reduce the likelihood that people re-offend. Unfortunately, the bill is ambiguous and creates unreasonable expectations about what data individual jails possess about recidivism that may take place in other jurisdictions. As a result, the bill would likely be interpreted as requiring county jails to ascertain from courts, other jails, or state prisons, potentially including such entities in other states, information regarding subsequent convictions. Requiring such would be very expensive and exceedingly time consuming; a problem exacerbated by the fact that the bill provides no funding for its requirements.

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