
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1132 **Hearing Date:** April 23, 2024
Author: Durazo
Version: April 9, 2024
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *County health officers*

HISTORY

Source: California Collaborative for Immigrant Justice
California Immigrant Policy Center
Immigrant Defense Advocates
Next Gen California

Prior Legislation: SB 334 (Durazo), Ch. 298, Stats. 2021
AB 263 (Arambula), Ch. 294, Stats. 2021
AB 3228 (Bonta), Ch. 190, Stats. 2020
AB 32 (Bonta), Ch. 739, Stats. 2019
AB 1320 (Bonta), vetoed in 2017

Support: ACLU California Action; All Rise Alameda; Alliance for Boys and Men of Color; Amnesty International USA; APLA Health; Asian Americans Advancing Justice-Southern California; Buen Vecino; California Coalition for Women Prisoners; California Pan-Ethnic Health Network; California Public Defenders Association; California Rural Legal Assistance Foundation; Center for Gender & Refugee Studies; Center for Immigration Law and Policy, UCLA Law; Central Valley Immigrant Integration Collaborative; Communities United for Restorative Youth Justice; Courage California; Disability Rights California; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Human Impact Partners; Immigrant Health Equity and Legal Partnership; Immigrant Legal Defense; Indivisible CA: Statestrong; Initiate Justice; Inland Coalition for Immigrant Justice; Interfaith Movement for Human Integrity; Justice & Diversity Center of the Bar Association of San Francisco; Keck Human Rights Clinic; Kern Welcoming and Extending Solidarity to Immigrant; La Cosecha; Latin Advocacy Network; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; National Lawyers Guild- SF Bay Area Chapter; NorCal Resist; Oakland Privacy; Orale: Organizing Rooted in Abolition Liberation and Empowerment; Public Counsel; Secure Justice; Southeast Asia Resource Action Center; Voices for Progress

Opposition: None known

PURPOSE

The purpose of this bill is to clarify that “private detention facilities” are subject to inspection by local health officers.

Existing law requires each county board of supervisors to appoint a local health officer (LHO). Provides that in the unincorporated territory of the county, LHOs are required to enforce and observe orders of the board pertaining to public health and sanitary matters, including regulations prescribed by the California Department of Public Health (CDPH), and statutes relating to public health. (Health & Saf. Code, §§ 101000, 101030.)

Existing law requires the LHO to investigate health and sanitary conditions in every county jail, every other publicly operated detention facility in the county, and all private work furlough facilities and programs at least annually. Requires private work furlough facilities and programs to pay an annual fee commensurate with the annual cost of investigations. Authorizes LHOs to make additional investigations of any county jail or other detention facility of the county as determined necessary. Requires LHOs to submit a report to the Board of State and Community Corrections (BSCC), the person in charge of the jail or detention facility, and to the board of supervisors or city governing board. Requires the city LHO to investigate health and sanitary conditions in every city jail and other detention facility at least annually in any city having a health officer. Authorizes the city LHP to make additional investigations of any city jail or detention facility as determined necessary. Requires the city LHO to submit a report to the BSCC, the person in charge of the jail or detention facility, and to the city governing body. (Health & Saf. Code, § 101045.)

Existing law requires LHOs, whenever requested by the sheriff, the chief of police, local legislative body, or the BSCC, but not more often than twice annually, to investigate health and sanitary conditions in any jail or detention facility, and submit a report to the officer and agency requesting the investigation and to the BSCC. (Health & Saf. Code, § 101045.)

Existing law requires the investigating LHO to determine if the food, clothing, and bedding is of sufficient quantity and quality that at least equal minimum standards and requirements of the BSCC for the feeding, clothing, and care of prisoners in all local jails and detention facilities, and if the sanitation requirements for restaurants have been maintained. (Health & Saf. Code, § 101045.)

Existing law requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility’s contract for operations. (Gov. Code, § 7320, subd. (a).)

Existing law defines a “detention facility” as a facility in which persons are incarcerated or otherwise involuntarily confined for purposes of execution of a punitive sentence imposed by a court or detention pending a trial hearing or other judicial or administrative proceeding. Specifies that a “detention facility” does not include:

- A facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to a juvenile that is under the jurisdiction of the juvenile court;
- A facility providing evaluation or treatment services to a person who has been detained, or is subject to an order of commitment by a court;

- A facility providing educational, vocational, medical, or other ancillary services to an inmate in the custody of, and under the direct supervision of, the Department of Corrections and Rehabilitation or a county sheriff or other law enforcement agency;
 - A residential care facility;
 - A school facility used for the disciplinary detention of a pupil;
 - A facility used for the quarantine or isolation of persons for public health reasons; or,
 - A facility used for the temporary detention of a person detained or arrested by a merchant, private security guard, or other private person.
- (Gov. Code, § 7320, subd. (b)(1).)

Existing law defines a “private detention facility” as a detention facility that is operated by a private, nongovernmental, for-profit entity pursuant to a contract or agreement with a governmental entity. (Gov. Code, § 7320, subd. (b)(2).)

Existing law defines a “private detention facility operator” as any private person, corporation, or business entity that operates a private detention facility. (Gov. Code, § 7320, subd. (b)(3).)

This bill adds private detention facility to the statute authorizing the LHO to make additional investigations of a county jail or other detention facility of the county as necessary.

This bill provides that “private detention facilities” has the same meaning as it does in the Government Code.

COMMENTS

1. Need For This Bill

According to the author:

The ability of county public health officers to enter and inspect private detention facilities is not clearly addressed under current California law. As it stands the relevant statutes empower county health officials to enter public detention facilities and private work furlough facilities. The lack of clarity on oversight of private detention facilities poses a unique and critical public health challenge. Conditions in these facilities not only affect the lives of those detained, but also impacts the surrounding communities. During the COVID-19 pandemic, an outbreak at Otay Mesa Detention Facility resulted in more than 300 staff and detained individuals becoming infected.

In order to ensure public health regulations and standards are upheld in private detention facilities for the health and safety of people detained and working in these facilities, SB 1132 clarifies that county health officers have authority to inspect private detention facilities as deemed necessary.

2. Private Detention Facilities

The federal government contracts with private detention facilities across the country to house immigration detainees. There are currently six private detention facilities operating in California

in four counties—San Bernardino County, Kern County, San Diego County, and Imperial County.

Federal, state, and local laws, including county public health orders, govern all immigration detention facilities operating in California. (California Department of Justice, *Immigration Detention in California: A Review of Detention Facilities' Response to COVID-19 as of Fall 2021* (Jul. 2022), p. 6 available at <<https://oag.ca.gov/system/files/media/immigration-detention-2022.pdf?>>.) Facilities that contract to hold detained noncitizens are also required to comply with national detention standards, which establish requirements for emergency planning, security protocols, detainee classification, discipline, medical care, food service, activities and programming, detainee grievances, and access to legal services. (*Id.* at p. 7.) The standards set the expectation that the Centers for Disease Control and Prevention (CDC) guidelines “for the prevention and control of infectious and communicable diseases shall be followed,” and directs each facility have written plans that “address the management of infectious and communicable diseases.” (*Ibid.*)

3. Inspection of Detention Facilities

LHOs serve a number of public health functions at the local level, including managing infectious disease control, implementing emergency preparedness and response, and overseeing public health services. There are 61 appointed physician LHOs in California—one for each of the 58 counties and the cities of Berkeley, Long Beach, and Pasadena. Regulations establish minimum standards for local detention facilities, including standards for the administration and operation of the facilities, medical and mental health care, nutritional quality of food, and environmental standards. Regulations define “local detention facility” to mean “any city, county, city and county, or regional jail, camp, court holding facility, or other correctional facility, whether publicly or privately operated, used for confinement of adults or of both adults and minors, but does not include that portion of a facility for confinement of both adults and minors which is devoted only to the confinement of minors.” (Cal. Code of Regs., tit. 15, § 1006.)

County jails, city jails, and other publicly operated detention facilities are subject to biennial inspections by the BSCC. (Pen. Code, § 6031.1.) Those biennial inspections include the annual health and safety inspections that LHOs are required to conduct annually, and which LHOs are authorized to conduct more frequently if necessary. (Pen. Code, § 6031.1, Health & Saf. Code, § 101045.) The BSCC is required to publicly posts the inspection reports as well as submit a report every two years to the Legislature which includes information pertaining to the inspection of those local detention facilities that have not complied with the minimum standards, specifying the areas in which the facility has failed to comply and the estimated cost to the facility in order to comply with the minimum standards. (Pen. Code, §§ 6031.1, 6031.2.)

4. Jurisdiction Over Private Detention Facilities

Communicable disease can easily spread in congregate living facilities or other housing where people who are not related reside in close proximity and share at least one common room. (National Center for Immunization and Respiratory Diseases (U.S.), Division of Viral Diseases, *COVID-19 Guidance for Shared or Congregate Housing* (Aug. 22, 2020), p. 1 available at <<https://stacks.cdc.gov/view/cdc/92388?>>.) During the COVID-19 pandemic, there were reports that there was confusion about the role of state and local health authorities with regard to federal detention facilities, which may have led to delays for vaccine distribution. (Ana Ibarra, *Immigration detention centers showcase California's vaccine chaos* (Feb. 22, 2021) available at

<<https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/>>.) For example, immigrant rights organizations sent a letter to public health officials in Kern County asking about LHO oversight, including how it planned to ensure detainees were being tested for COVID. (*Ibid.*) In response, the county’s director of public health services said they did not have jurisdiction over the center. (*Ibid.*) The article indicated that there were similar instances of confusion over jurisdiction in other counties. (*Ibid.*)

This bill provides that private detention facilities are subject to inspection by local health officers.

5. Argument in Support

According to a coalition of organizations, including the co-sponsors of the bill:

In the past, the majority of private detention facilities in California operated pursuant to joint contracts with counties, but have since shifted to direct contracts with the federal government. Despite this change, according to their federal contracts, these private facilities remain subject to California state and local public health oversight.

While public health oversight laws empower inspections of “publicly operated detention facilities and all private work furlough facilities,” they do not explicitly cover private detention facilities. [See California Code, Health and Safety Code-HSC § 101045].

...[A]dvocates have documented a lack of clarity with respect to how these facilities are viewed by public health officials. On Aug. 24, 2020, immigrant rights organizations sent a letter to public health officials in Kern County, home to the Mesa Verde Detention Center, seeking information related to COVID-19 testing. In response, the county’s director of public health services said their department did not have jurisdiction over the center.

...

All public detention facilities have mechanisms to review poor health and safety outcomes. However, oversight of health conditions in private detention facilities is limited. The federal government contracts with the Nakamoto Group Inc. to conduct annual inspections of private civil facilities in California ... A recent report by the Department of Homeland Security Office of Inspector General stated that Nakamoto’s inspections “do not fully examine actual conditions or identify all compliance deficiencies,” while Office of Detention Oversight inspections are “too infrequent to ensure the facilities implement all corrections.”

...

Private detention facilities continue to pose challenges with respect to health, safety, and sanitary conditions. ...

The goal of SB 1132 is to ensure that county health officials have the ability to enter these facilities when necessary. The bill does not impose an annual

inspection requirement to county health officials, but empowers them to ensure that these private facilities adhere to public health orders and guidelines that are necessary to keep our state safe.

-- END --