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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 205                      **Hearing Date:** April 28, 2015  
**Author:** Beall  
**Version:** April 9, 2015  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AA

**Subject:** *Proposition 47: Evaluation Study*

### HISTORY

Source: Author

Prior Legislation: None

Support: California Council of Community Mental Health Agencies; Center for Evidence-Based Corrections at the University of California, Irvine; Golden State Bail Agents Association; San Diego State University; Mental Health America of California; University of California, Los Angeles; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California Narcotic Officers Association; California Chamber of Commerce; California District Attorneys Association; California Peace Officers Association; Crime Victims United of California

Opposition: None Known

### PURPOSE

***The purpose of this bill is to 1) have a university conduct a 4-year evaluation of Proposition 47 with respect to its impact, costs, and affected offender population; and 2) require the Department of Justice to collect data concerning incarceration changes prompted by Proposition 47 and recidivism data for offenders resentenced pursuant to Proposition 47.***

*Current law* reflects the provisions of Proposition 47, also known as the Safe Neighborhoods and Schools Act, which was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services, as specified. The initiative also made additional changes to criminal laws. (See Legislative Analyst's Office analysis of Proposition 47, <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.)

*Current law*, as enacted by Proposition 47, requires that by August 15 of each fiscal year beginning in 2016, the Controller shall disburse moneys deposited in the Safe Neighborhoods and Schools Fund as follows:

- (1) Twenty-five percent to the State Department of Education, to administer a grant program to public agencies aimed at improving outcomes for public school pupils in kindergarten and grades 1 to 12, inclusive, by reducing truancy and supporting students who are at risk of dropping out of school or are victims of crime.
- (2) Ten percent to the California Victim Compensation and Government Claims Board, to make grants to trauma recovery centers to provide services to victims of crime pursuant to Section 13963.1 of the Government Code.
- (3) Sixty-five percent to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems. (Government Code § 7599.2(a).)

*Current law* requires that, for each of these programs, the agency responsible for administering the programs shall not spend more than 5 percent of the total funds it receives from the Safe Neighborhoods and Schools Fund on an annual basis for administrative costs.

*Current law* requires the controller to conduct an audit of these grant programs “to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public,” as specified.

*Current law* requires that the funding established pursuant to this act “be used to expand programs for public school pupils in kindergarten and grades 1 to 12, inclusive, victims of crime, and mental health and substance abuse treatment and diversion programs for people in the criminal justice system. These funds shall not be used to supplant existing state or local funds utilized for these purposes.”

*Current law* provides that local agencies are not obligated to provide programs or levels of service described in these provisions above the level for which funding has been provided.

*This bill* would require a four-year evaluation of process, outcomes and costs of Proposition 47, with the following features and requirements:

### **Scope and Provider of the Evaluation; Report**

*This bill* would require the Department of Finance to “select a public or private university through a competitive process to conduct a four-year evaluation assessing the process, outcomes, and costs of Proposition 47, the Safe Neighborhood and Schools Act.”

*This bill* would require the selected university to “submit a report to the Legislature, no later than January 1, 2017, and annually by that date for the following three years. The report shall include, but not be limited to, all of the following:

- (1) A study of the implementation of the proposition and its impact on incarceration costs, recidivism as compared to similar populations in the criminal justice system and overall crime, prison and jail construction, and welfare costs.
- (2) The adequacy of funds appropriated for these purposes.

- (3) The number and characteristics of participants served by programs funded with grant moneys, (as specified) . . . . Because it may not be feasible to collect this data from all 58 counties, this component of the report may be limited to a small number of representative counties, to be selected with input from relevant stakeholders serving as a research oversight board.”

*This bill* would require that all data collected for the report be made publically available.

*This bill* would sunset these provisions on January 1, 2021.

## **Data**

*This bill* would require the Department of Justice to gather and compile the following data:

- (1) The number of people released from state prisons and county jails pursuant to the provisions of Proposition 47.
- (2) The number of those released pursuant to Proposition 47 that are rearrested or re-incarcerated within three years as compared to similar populations in the criminal justice system.

*This bill* would require that this information not include any information that would identify an individual specifically.

*This bill* would require that this information be made available, upon request, to the public and to the public or private university selected for the project described above.

## **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. Stated Need for This Bill

The author states:

By approving Proposition 47, California became the largest state to enact serious sentencing reform de-signed to reduce incarceration. Proposition 47 reclassified minor drug and theft crimes from felonies to misdemeanors. Research from the Legislative Analyst’s Office indicates that Proposition 47 could result in as many as 40,000 fewer jail and prison sentences annually.

Similar sentencing reform enacted in Georgia and Texas has produced substantial savings without increasing the overall crime rates in those states. More controlled analyses have also shown that the benefits of one-time prisoner releases and the downward reclassification of certain offenses exceed the costs. However, other states, such as Kentucky and Arkansas, have reported mixed results after initiating similar measures, suggesting that implementation factors are important.

Implementation varies between states, which makes independent evaluations important to the success of sentencing reform. The evaluation of Proposition 47 is paramount to the law’s implementation and long-term success. This is precisely why the LAO—in its analysis of the implementation Proposition 47—recommended the legislature require the evaluation of grant recipients and the outcomes they achieve.

SB 205 establishes an independent, formative evaluation of Proposition 47 by a public or private university selected by the Department of Finance through a competitive process. The bill requires four annual studies starting in 2017 to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, and submit those studies to the

Legislature. In addition, the studies shall include, but not be limited to: a study of the implementation process; a review of lower incarcerations costs; reductions or increases in crime; reduced prison and jail construction; reduced welfare costs; the adequacy of funds appropriated; the number and characteristics of participants served as a result of this bill; and other impacts or issues identified.

SB 205 will ensure Proposition 47 is implemented efficiently, while providing accountability and efficient use of funds.

## **2. What This Bill Would Do; LAO Recommendation**

This bill would require the Department of Finance to identify a university to conduct a 4-year evaluation of Proposition 47 generally with respect to its impact, costs, and affected offender population. The bill also would require the Department of Justice to collect data concerning incarceration changes prompted by Proposition 47 (resentencing effects on prison and jails) and recidivism data for offenders resentenced pursuant to Proposition 47. As noted by the author, in February of this year the Legislative Analyst's Office published a report on the implementation of Proposition 47. That report included the following:

Proposition 47 makes two changes that will reduce the state prison population. First, the reduction of certain felonies and wobblers to misdemeanors will make fewer offenders eligible for state prison sentences. We estimate that this could result in an ongoing reduction to the state prison population of several thousand inmates within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years. The release of these inmates will also result in a slight increase in the state parole population of a couple thousand parolees over a three-year period. ¶ . . .

Under Proposition 47, trial courts will experience a one-time increase in costs resulting from the processing of (1) resentencing petitions from offenders currently serving felony sentences for the crimes affected by Proposition 47 and (2) reclassification petitions from individuals who have already completed their sentences. Resentencing requests eligible under the proposition will be resolved in judicial hearings. Based on our discussions with the courts, such resentencing hearings could last minutes if the request is uncontested or several hours if evidence and arguments need to be presented. In contrast, Proposition 47 authorizes the court to resolve reclassification petitions without a hearing. Finally, the proposition requires that all petitions be filed within three years of its enactment unless the petitioner can demonstrate good cause for filing at a later date. ¶ . . .

The reduction in penalties authorized in Proposition 47 will affect county jails and probation departments, as well as various other county agencies (such as public defenders and district attorneys' offices). In general, the proposition will significantly reduce criminal justice workload for counties. We estimate that, prior to the passage of Proposition 47, counties spent several hundred million dollars annually on workload that will be eliminated by the measure. However, local decisions on how to respond to this workload reduction will determine

whether it results in fiscal savings or improvements to the administration of local criminal justice systems, such as reduced jail overcrowding. We discuss below the specific effects of Proposition 47 on jails, probation departments, and other county agencies. ¶ . . .

As discussed above, the reduction in penalties from Proposition 47 will increase court workload associated with resentencing and reclassification of offenders over the next few years. As a result, county district attorneys' and public defenders' offices (who participate in these processes) and county sheriffs (who provide court security) could experience a temporary increase in workload. However, Proposition 47 will reduce on an ongoing basis the workload for these local agencies associated with both felony filings and other court hearings (such as for offenders who break the rules of their community supervision). However, these effects on county workload are unlikely to generate significant costs or savings.

In order to ensure that (Safe Neighborhoods and Schools Fund) SNSF dollars are being used effectively, we recommend that the Legislature require the evaluation of recipients and the outcomes they achieve. This would serve two major purposes. First, it would ensure that programs are achieving the intended recidivism reduction goals in a cost-effective manner. Second, it would allow programs that have not previously been proven to reduce recidivism cost-effectively to demonstrate their ability to do so. In order to facilitate such evaluation, the Legislature could direct BSCC to establish a periodic evaluation process for grant recipients. For example, BSCC could require grant recipients to submit specific performance information, including cost, participation, completion, and recidivism reduction data. The Legislature could have BSCC periodically report on the outcomes achieved. The BSCC could use the information gathered to inform future funding decisions.<sup>1</sup>

#### WOULD THIS BILL PROVIDE AN EFFECTIVE METHOD FOR GATHERING DATA AND SUPPORTING ANALYSIS ON THE EFFECT OF PROPOSITION 47?

Members also may wish to discuss what infrastructure exists now or may be required for the Department of Justice to collect the recidivism data required by this bill.

#### WOULD EXISTING DATA BASES AVAILABLE TO DOJ ALLOW FOR THE RECIDIVISM DATA THIS BILL WOULD REQUIRE?

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<sup>1</sup> The 2015-16 Budget: Implementation of Proposition 47 (Legislative Analyst's Office) (February 17, 2015)(<http://www.lao.ca.gov/reports/2015/budget/prop47/implementation-prop47-021715.aspx>.)