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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair  
2023 - 2024 Regular

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**Bill No:** SB 519                      **Hearing Date:** April 25, 2023  
**Author:** Atkins  
**Version:** April 13, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Corrections*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 1137 (Gonzalez), Ch. 365, Stats. of 2022  
SB 16 (Skinner), Ch. 28, Stats. of 2021  
AB 748 (Ting), Ch. 960, Stats. of 2018  
SB 1421 (Skinner), Ch. 988, Stats. of 2018  
SB 911 (Calderon), Ch. 1236, Stats of 1993

**Support:** Alliance San Diego; Black Panther Party - San Diego; California Broadcasters Association; California Collaborative for Immigrant Justice; California News Publishers Association; California Public Defenders Association (CPDA); Californians for Safety and Justice; Change Begins With Me Indivisible Group; Communities United for Restorative Youth Justice (CURYJ); Consumer Attorneys of California; Del Cerro for Black Lives Matter; Disability Rights California; Dolores Street Community Services; Ella Baker Center for Human Rights; First Amendment Coalition; Hillcrest Indivisible; Immigrant Defense Advocates; Immigrant Legal Defense; Initiate Justice; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; Media Alliance; MILPA; Muslim American Society - Public Affairs & Civic Engagement (MASPACE); NextGen California; Oakland Privacy; Rise Up San Diego; Secure Justice; Sister Warriors Freedom Coalition; Smart Justice California; Team Justice; Think Dignity

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to:*

- 1) Authorize county boards of supervisors to establish a department of corrections separate from the Department of the Sheriff to be headed by an executive officer appointed by the board, as specified.*

- 2) ***Make records relating to an investigation conducted by a local detention facility into specified incidents involving deaths in custody or related to a subject officer, as defined, available for public inspection.***
- 3) ***Expand the mission of the Board of State and Community Corrections to include the promotion of legal and safe conditions for youth, inmates and staff in local detention facilities.***

*Existing law* provides that the Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. (Cal. Const. Art. XI, Sec. 1, subd. (b).)

*Existing law* provides that county charters shall provide for, among other things, a governing body of 5 or more members, an elected sheriff and other officers, the performance of duties required by statute, and the powers and duties of governing bodies and all other county officers. (Cal. Const. Art. XI, Sec. 4.)

*Existing law* provides that the board of supervisors of any county, may, by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farms and road camps, their functions and personnel. (Govt. Code § 23013.)

*Existing law* provides that notwithstanding any other provision of law, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it, the sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it, as specified. (Govt. Code §26605.)

*Existing law* provides that notwithstanding any other provision of law, no deputy sheriff shall be required to become

*Existing law* provides that the common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated, and sets forth the manner in which they are to be used. (Penal Code § 4000.)

*This bill* provides that a board of supervisors may establish a department of corrections and rehabilitation to be headed by an executive officer appointed by the board, and removes a limitation precluding boards from exercising this power after July 1, 1993.

*This bill* provides that if a board of supervisors exercises the authority conferred above, the board shall set forth its reasons for establishing a department of corrections and rehabilitations, which may include, but are not limited to, any of the following findings:

- A department of corrections and rehabilitation will better protect public health and safety.
- There has been a disproportionate increase in deaths within the county jail.

- There is persistent unequal treatment of individuals within a protected class under the Unruh Civil Rights Act
- A department of corrections and rehabilitation will provide better administration or operation of the county jail.
- There has been persistent abuse or disregard of the civil and human rights of individuals within the county jail.
- There has been a violation of a federal decree or settlement relating to institutional punishment and rehabilitation.
- County jail operations have failed to adhere to Title 15 of the California Code of Regulations, regarding crime prevention and corrections
- The county jail failed to secure accreditation by one or more national corrections associations.

*This bill* provides that if a board of supervisors exercises their authority to establish a department of corrections and rehabilitation per the above provision, the executive officer appointed by the board shall meet all of the following qualifications:

- Either professional experience in corrections management or extensive familiarity with Title 15 of the California Code of Regulations, regarding crime prevention and corrections.
- Extensive familiarity with the requirements of appropriate medical and mental health care within a corrections setting.
- Demonstrated commitment to protecting the civil and human rights of incarcerated individuals.
- Knowledge of best practice and evidence-based approaches to rehabilitation.

*This bill* provides that if a board of supervisors exercises their authority to establish a department of corrections and rehabilitation per the above provision, the executive officer appointed by the board shall assume a sheriff's duties under provisions of existing law pertaining to a county jail.

*This bill* provides that the provision of existing law requiring the sheriff to take charge of and be the sole and exclusive authority to keep the county jail, as specified, does not apply to either of the following:

- A county in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the incarcerated persons in it.
- A county that has established a department of corrections and rehabilitations pursuant to this bill.

*Existing law*, the California Constitution, declares the people’s right to transparency in government. (“The people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....”) (Cal. Const., art. I, Sec. 3.)

*Existing law*, the California Public Records Act (CPRA), generally provides that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)

*Existing law* provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. (Gov. Code § 7922.525)

*Existing law* provides that except as provided, the CPRA does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code §7923.600(a).)

*Existing law* requires certain information regarding the investigation of crimes, including recordings of “critical incidents,” as defined, to be disclosed to the public under specified circumstances and subject to certain limitations. (Gov. Code §§ 7923.605 et. seq.)

*Existing law* provides that in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death, as specified. These writings are public records within the meaning of the CPRA. (Gov. Code §12525.)

*Existing law* provides that a “custodial officer” is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence in that facility. (Pen. Code §831(a).)

*Existing law* requires law enforcement agencies to establish a procedure to investigate complaints by members of the public against personnel of those agencies and make a written description of the procedure available to the public. (Pen. Code §832.5(a).)

*Existing law* defines “personnel records” as any file maintained under that individual’s name by his or her employing agency and containing records relating to personal data, employee advancement, appraisal or discipline, complaints or investigations of complaints concerning specified events, and other specified topics. (Pen. Code §832.8(a).)

*Existing law* defines “sustained” as a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to specified provisions of the Peace Officer’s Bill of Rights, that the actions of the peace officer or custodial officer were found to violate law or department policy. (Pen. Code §832.8(b).)

*Existing law* states that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7(a).)

*Existing law* provides that certain categories of peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the CPRA, and establishes related procedures, rules and limitations. (Pen. Code, § 832.7(b).)

*This bill* sets forth several definitions for terms used throughout its provisions:

- “Death incident” means an event where a person has died in the custody or supervision of the local detention facility or where a person who was previously in custody died within 30 days of being compassionately released.
- “Local detention facility” means any city, county, city and county, or regional jail, camp, court holding facility, private detention facility or other facility, used for confinement or correctional holding of adults or of both adults and minors, but does not include that portion of a facility for confinement of both adults and minors that is devoted only to the confinement of minors.
- “Private detention facility” has the same meaning as Gov. Code §7320 - a detention facility that is operated by a private, nongovernmental, for-profit entity pursuant to a contract or agreement with a governmental entity.
- “Subject officer” means a custodial officer, or responsible health care staff, against whom possible misconduct was alleged or whose actions were reviewed during an administrative or criminal investigation of a death incident.
- “Custodial officers” means those officers with the rank of deputy, correctional officer, patrol persons, or other equivalent sworn or civilian rank whose duties include the supervision of incarcerated or detained persons at a local detention facility.
- “Responsible healthcare staff” means the health authority, individual or agency that is designated with responsibility for providing health care in the local detention facility.

*This bill* provides that notwithstanding the general confidentiality of peace officer records or any other law, the following records maintained by a local detention facility shall not be confidential and shall be made available for public inspection pursuant to the CPRA:

- Any record relating to an investigation conducted by the local detention facility involving a death incident.
- Any local detention facility personnel record of a subject officer.

*This bill* provides that records subject to disclosure under the bill shall include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against a subject officer, whether the subject officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the death incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

*This bill* provides that a record subject to disclosure under the bill shall include instances where the subject officer resigned before the local detention facility or oversight agency concluded its investigation into the death incident.

*This bill* provides that a record from a separate and prior investigation or assessment of a separate death incident shall not be released unless it is independently subject to disclosure under the bill's provisions.

*This bill* provides that an agency shall redact a record disclosed pursuant to its provisions only for the following purposes: to remove personal data, as specified; to preserve the anonymity of whistleblowers, complainants, victims and witnesses; to protect specified confidential information the disclosure of which would cause a privacy invasion that clearly outweighs the public interest in records about officer misconduct; and where there is specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the custodial officer or another person.

*This bill* provides that an agency may redact a record disclosed pursuant to its provisions, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure.

*This bill* provides that during an active criminal investigation, disclosure of a record of a death incident may be delayed for up to 60 days from the date of the incident or until the district attorney determines whether to file criminal charges, which, whichever occurs first, but the local detention facility must provide, in writing, the specific basis for the facility's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The writing shall include the estimated date for disclosure.

*This bill* provides that after 60 days from the death incident, the local detention facility may continue to delay the disclosure of records information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against a subject officer, as specified.

*This bill* provides that in an action to compel disclosure pursuant to the CPRA, a local detention facility may justify delay by filing an application to seal the basis for withholding, as specified, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation. This clause does not prohibit a court from conducting in camera review to determine whether privilege exists.

*This bill* provides that if criminal charges are filed related to the death incident, the local detention facility may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to existing law.

*This bill* provides that during an administrative investigation into an incident subject to disclosure under the bill, the local detention facility may delay the disclosure of records or information until the facility determines whether the death incident violated a law or agency policy, but no longer than 180 days after the date of the local detention facility's discovery of the death incident by a person authorized to initiate the investigation.

*This bill* specifies that a record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined, or if the complaint is unfounded.

*This bill* specifies the scope of costs of copies related to records subject to disclosure under the bill.

*This bill* specifies that except to the extent temporary withholding for a longer period is permitted, records subject to disclosure under the bill shall be provided at the earliest possible time and no later than 45 days from the date of a request for disclosure.

*This bill* provides that the attorney-client privilege does not prohibit the disclosure of either of the following:

- Factual information provided by the local detention facility to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the local detention facility's attorney.
- Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the local detention facility and its attorney.

*This bill* specifies that the above provision does not prohibit the local detention facility from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law. However, to the extent that the local detention facility asserts attorney-client privilege or any other prohibitive disclosure provided by federal or state law, the court may conduct in camera review unless prohibited by law.

*This bill* provides that, notwithstanding existing law, the local detention facility may do any of the following:

- Release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.
- Disseminate data regarding the number, type, or disposition of complaints made against its custodial officers if that information is in a form that does not identify the individuals involved.
- Release factual information concerning a disciplinary investigation if the custodial officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action, as specified.

*This bill* provides that the local detention facility shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. However, the notification is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding, as specified.

*This bill* specifies that its provisions do not affect discovery or disclosure of information contained in a custodial officer's personnel file pursuant to specified provisions of existing law, nor do they affect the disclosure of other records provided pursuant to any other existing law.

*This bill* specifies that it does not supersede or affect the *Pitchess* criminal discovery process, nor is it intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59*.

*Existing law* establishes the Board of State and Community Corrections (BSCC). (Pen. Code, § 6024, subd. (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* requires the BSCC to regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Requires the BSCC to seek to ensure that its efforts are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, include the participation of those who must implement a board decision and are impacted by a board decision, and promote collaboration and innovative problem solving consistent with the mission of the board. Authorizes the BSCC to create special



committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board. (Pen. Code, § 6024, subd. (c).)

*This bill* expands the BSCC's mission to include promoting legal and safe conditions for youth, inmates, and staff in local detention facilities.

## COMMENTS

### 1. Need for This Bill

According to the Author:

Local detention centers have unfortunately been slow to address internal issues and in many cases unresponsive, especially as it relates to the alarming increase in deaths of persons in-custody. This is a growing problem not only here in San Diego County, but at other detention facilities around the state. It's critical to have more oversight and accountability. SB 519 would make investigatory reports on in-custody deaths public, so families can have the transparency they deserve and the county can work to reduce further deaths. This bill would also give the Board of Supervisors the authority to appoint a chief executive officer with the responsibility of operating detention facilities if a Sheriff's department is unresponsive or fails to address the problems with its county jail.

### 2. Recent State Auditors Report – Deaths in Custody in San Diego County

Between 2006 and 2020, 185 people died in San Diego County jails – one of the highest totals among counties in the State. In February 2022, the State Auditor's Office released the results of an audit of the San Diego County Sheriff's Department – which oversees the jails – to determine the reasons for in-custody deaths and identify the steps the department took to address the deaths. The 126-page audit reached two overarching conclusions: 1) The San Diego County Sheriff's Department did not take sufficient steps to prevent the high number of deaths in its jails, and 2) neither the Sheriff's Department nor the Citizens Law Enforcement Review Board (CLERB)<sup>1</sup> has taken adequate action in response to the deaths of incarcerated individuals.<sup>2</sup> Regarding, its first major conclusion, the report found:

The high rate of deaths in San Diego County's jails compared to other counties raises concerns about underlying systemic issues with the Sheriff's Department's policies and practices. Our review identified deficiencies with the way the Sheriff's Department provides care for and protects incarcerated individuals that likely contributed to deaths in its jails. These deficiencies related to its provision of medical and mental health care, as well as its performance of checks to ensure the safety and health of individuals in its custody. When we evaluated the policies of three

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<sup>1</sup> CLERB is a citizen-governed board approved by San Diego County voters in 1990 which is responsible for reviewing complaints of misconduct and investigating deaths arising in connection with the actions of officers employed by the Sheriff's Department or Probation Department.

<sup>2</sup> "San Diego County Sheriff's Department – It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody." California State Auditor, Report 2021-109. 3 February 2022. <http://www.auditor.ca.gov/reports/2021-109/index.html>

comparable counties, we found that some have adopted procedures that could address weaknesses we identified at the San Diego Sheriff's Department. That said, the problems we identified with that department's policies are in part the result of certain statewide corrections standards that are not robust or specific enough, leaving the establishment of effective practices to the discretion of the individual counties.

Regarding the response to the in-custody deaths by the Sheriff's Department and CLERB, the report found:

The Sheriff's Department has not consistently taken meaningful action in response when in-custody deaths have occurred. Specifically, its reviews of in-custody deaths have been insufficient and have lacked transparency. As a result, the Sheriff's Department risks conveying to the public that it is not taking these deaths seriously and making every effort possible to prevent similar deaths in the future. In addition, CLERB [...] has failed to provide effective, independent oversight of in-custody deaths. In violation of its own rules and regulations, CLERB's investigations of the deaths of individuals in the Sheriff's Department's custody have not been independent, thorough, or timely. Moreover, CLERB failed to investigate nearly a third of the deaths [...] in the past 15 years, meaning that dozens of deaths have not been subject to a key form of review outside of the Sheriff's Department.

The audit contained various recommendations for legislative action, including several related to requirements governing local correctional facilities' medical and mental health policies and internal reporting and review processes. Among other actions, the audit also urged the Legislature to:

- Require sheriffs' departments to report to the Attorney General individuals who are released from custody after being transported directly to a hospital or similar medical facility and subsequently die in the facility and provide the Attorney General with all facts concerning the death, such as the cause and manner.
- Require the Sheriff's Department to either make public the facts it discusses and recommendations it decides upon in the relevant Critical Incident Review Board<sup>3</sup> meetings or to establish a separate public process for internally reviewing deaths and making necessary changes.

In 2022, the year following the audit's release, the Sheriff's Department reported 19 deaths in custody, as well as 2 so far in 2023.<sup>4</sup> And in April 2022, CLERB released a report in which it found that after considering countywide mortality rates, San Diego jails have the highest number of "unexplained deaths" out of California's 12 largest counties.<sup>5</sup> However, this problem is not confined to San Diego. Last month (March 2023), three Los Angeles County inmates died in just

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<sup>3</sup> The Sheriff Department's internal entity for reviewing "critical incidents, such as certain uses of force by officers and deaths in custody, and identifying corrective measures. See AB 748 (Ting, Ch. 960, Stats. of 2018).

<sup>4</sup> <https://www.sdsheriff.gov/resources/transparency-reports>

<sup>5</sup> "San Diego In-Custody Death Study." Produced by Analytica Consulting for the San Diego Citizens Law Enforcement Review Board. April 2022, pp. iii-iv  
<https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/in-custody-death-study/Att.G-CLERB%20In-Custody%20Death%20Study.pdf>

a nine-day period, and for Los Angeles County deaths in custody in 2022, autopsies have only been completed in roughly a third of the 44 cases.<sup>6</sup>

This bill does not directly adopt the recommendations of the audit described above, but is consistent with their focus on transparency and public accountability. That is, this bill seeks to address the growing crisis of deaths in California’s county jails by 1) permitting counties to reorganize the way they manage local corrections, and 2) creating a robust framework for the release of records related to deaths that occur in the custody of a local correctional facility.

### **3. County Departments of Corrections and Rehabilitation**

As mentioned above, one major provision of this bill grants counties the authority to create a local department of corrections and remove the responsibility of maintaining jails and their inmates from the purview of the elected county sheriff. Counties actually had this authority prior to 1993, before the passage of SB 911 (Calderon, Ch. 1236, Stats. of 1993), which provided, among other things, that a county sheriff’s authority over the jails and their inmates shall be the sole and exclusive authority. At the time, proponents of the bill argued that county sheriffs, as elected officials, are more directly accountable to the voters in whose interest it is for jails to run safely and efficiently.<sup>7</sup> SB 911 actually preserved the statutory language authorizing counties to create a separate department of corrections, but suspended indefinitely the ability of counties to exercise that authority, provided they had not already.<sup>8</sup>

This bill essentially “unfreezes” that authority, allowing counties to establish a department of corrections and rehabilitation headed by an officer appointed by the county’s board of supervisors. However, in order to exercise this authority, the bill requires a board of supervisors to set forth its reasons for doing so by resolution – and lays out several possibilities – and sets forth minimum requirements for board’s chosen executive officer. In reviving county authority to establish a department of corrections and rehabilitation, the bill makes relatively minimal changes to code. However, since the authority was frozen in 1993, several new statutes have been added that contain language referring – either directly or indirectly – to a sheriff’s sole authority of county jails. These references are located primarily at Penal Code § 4000 et. seq., and another such reference is located at Penal Code §831.5(a).<sup>9</sup> In order to avoid confusion and conflict, these sections should be amended to provide for the authority of an executive officer of a county department of corrections and rehabilitation. This bill has also been referred to the Committee on Governance and Finance, which will further analyze its local government implications.

### **4. Disclosure of Records Related to Deaths in Custody**

In 1968, the Legislature passed the California Public Records Act (CPRA), declaring that “access to information concerning the conduct of the people’s business is a fundamental and

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<sup>6</sup> “Three Inmates Died in Los Angeles County Jails in Just Over a Week.” 28 March 2023. Los Angeles Times. <https://www.latimes.com/california/story/2023-03-28/three-inmates-died-in-the-los-angeles-county-jails-in-just-over-a-week>

<sup>7</sup> “Bill Analysis – SB 911.” Prepared by the Assembly Committee on Public Safety. [http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb\\_0901-0950/sb\\_911\\_cfa\\_930824\\_152041\\_asm\\_comm](http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0901-0950/sb_911_cfa_930824_152041_asm_comm)

<sup>8</sup> Currently, Napa County is the only county that has a Department of Corrections distinct from the Department of the Sheriff. See <https://www.countyofnapa.org/2109/Corrections>

<sup>9</sup> Other pertinent sections may exist but these were the primary sections identified by committee staff.

necessary right of every person in the state.”<sup>10</sup> The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities.<sup>11</sup> Under the law, virtually all public records are open to public inspection unless express exempted in statute. However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, “records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure.”<sup>12</sup> In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely 1) records of complaints to, or investigations conducted by any state or local police agency, 2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law.<sup>13</sup>

In 2006, the California Supreme Court reinterpreted a key Penal Code provision (§832.7) to restrict public access to police misconduct records, rendering California one of the most secretive states when it came to police officer records.<sup>14</sup> However, in 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public’s ability to access previously confidential peace officer personnel records. In 2021, the Legislature passed a related measure, SB 16 (Skinner, Ch. 402, Stats of 2021), building upon the transparency provisions of SB 1421. Together, the two pieces of legislation exempted 8 categories of peace officer records<sup>15</sup> from the confidentiality requirement of Penal Code §832.7, and established a framework governing what specific records must be released, and when and how they must be released.

While Senate Bills 1421 and 16 were focused on alleged instances of officer misconduct, this bill seeks to address a distinct yet related issue regarding law enforcement records of death in custody investigations. According to the Author:

As local governments try to grapple with this crisis, the public continues to demand answers but are often denied access. For example, reports prepared by a sheriff’s department following an in-custody death are often shielded from disclosure by claims of attorney-client privilege or claims of attorney work-product. These reports include critical details about what led to an in-custody death, including policy gaps that could have contributed to a person’s death. And yet, families and the public are not given access to this important information and must try to litigate these issues with the hope that courts will rule in their favor.

In order to achieve its goal of transparency, this bill adapts the disclosure framework initially established by SBs 1421 and 16 to apply to local detention facility records regarding deaths in

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<sup>10</sup> California Government Code §7921.000

<sup>11</sup> *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.

<sup>12</sup> Gov. Code, § 7922.000

<sup>13</sup> Gov. Code, §§ 7923.600; 7927.700, 7927.705

<sup>14</sup> *Copley-Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272

<sup>15</sup> These 8 categories are: Incidents involving the discharge of a firearm at a person or use of force against a person resulting in death or great bodily injury, and sustained findings involving excessive or unreasonable force, failure to intervene in another officer’s excessive or unreasonable force, sexual assault, dishonesty, discrimination based on protected class, or an unlawful arrest or search.

custody. Specifically, this bill specifies that 2 types of records are *not* confidential and are subject to release pursuant to a CPRA request: 1) any record related to an investigation conducted by the local detention facility involving a death incident, and 2) any local detention facility personnel record of a subject officer. The bill defines several key terms (discussed further below) in order to clarify its scope and applicability, including “death incident,” “local detention facility,” “private detention facility,” “subject officer,” “custodial officer,” and “responsible health care staff.”<sup>16</sup>

From a holistic perspective, the process governing the release of records related to deaths in custody set forth by this bill should not be unreasonably difficult for agencies to comply with, as they have had over four years to develop policies and systems to comply with the nearly identical process established by SB 1421. However, like SB 1421, this bill may lead to a deluge in CPRA requests submitted to law enforcement agencies across the state regarding deaths in custody, potentially posing a considerable logistical challenge. Not only is the universe of responsive records voluminous, but determining whether a particular record is responsive will likely be a time-intensive process.

Additionally, the bill’s definitions raise a host of minor issues that the Committee should be aware of and that the Author may wish to address via clarifying amendments.

#### *“Death Incident”*

The bill defines a “death incident” as an event where a person has died in the custody or supervision of the local detention facility or where a person who was previously in custody died within 30 days of being compassionately released. With the 30-day window, the Author is presumably trying to capture incidents where injuries received while a person was in custody led to that person’s subsequent death out of custody. However, the longer the period of time that technically constitutes a “death incident,” the higher the likelihood that a death is less related to a person’s in-custody experiences. For instance, under the bill, an individual released from custody on Day 1 may die in a car accident or of a drug overdose on Day 15 or 25, an incident that would still trigger the release of records, yet is entirely unrelated (or at least, much less related) to violence or trauma sustained while in custody. To ameliorate this, the Author may wish to consider shortening this timeframe or specifying that an out-of-custody death within the 30-day window must have some nexus with the deceased’s in-custody experiences.

#### *“Subject Officer”*

This bill provides for the release, pursuant to a PRA request, of any local detention facility personnel record of a subject officer, and defines “subject officer” as a custodial officer, or responsible healthcare staff, against whom possible misconduct was alleged or whose actions were reviewed during an administrative or criminal investigation of a death incident. The Committee and Author may wish to consider whether the second category of subject officer – officers whose actions were reviewed during an investigation of a death incident – is too broad. That is, for any death incident that triggers a release of records under the bill, the actions of several officers may be “reviewed,” either for actions directly or indirectly causing death or injury, or simply to ascertain whether the officer was involved at all. This may lead to situations in which an officer’s full personnel record is released simply because an administrative body

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<sup>16</sup> Refer to p.5 of the analysis for the full definitions.

sought to determine whether they were actually involved in an incident, even if it is determined that the officer ultimately was not involved. If this is the intent of the bill, such a broad disclosure mandate may lead to situations where the sheer volume of responsive documents is so high that the discovery of truly relevant facts is obstructed or delayed. The definition of “subject officer” may benefit from additional clarity and precision in its scope.

#### *“Personnel Record”*

Existing law defines “personnel record” as any file maintained under that individual’s name by his or her employing agency and containing records relating to personal data, as specified, medical history, election of employee benefits, employee advancement, appraisal or discipline, complaints or investigations of complaints, as specified, and any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.<sup>17</sup> However, that provision specifies that that definition only applies to the release of personnel records under Penal Code §832.7. As one of the central provisions of this bill mandates the release of personnel records in certain circumstances, the Author should clarify whether this definition is appropriate or whether a separate definition is necessary. In any event, what constitutes a “personnel record” for the purposes of this bill should be clarified.

In addition, this bill provides that any “local detention facility personnel record of a subject officer” must be made available pursuant to a PRA request. However, even if the term “personnel record” is defined, it is not entirely clear what a “local detention facility personnel record” practically refers to. Is it a subject officer record maintained by and housed at the local detention facility? Is it the portion of a subject officer’s record that relates exclusively to his or her service at a local detention facility? As almost all county jails in the state are staffed by sworn deputy sheriffs and custodial officers employed by county sheriffs, it is possible, if not likely, that personnel records are not actually maintained by local detention facilities, but rather the sheriffs’ offices to which their staffs report. Additionally, it is likely that many of the deputy sheriffs and custodial officers serving at detention facilities have spent portions of their careers in different postings, whether on patrol or in administration. The meaning and scope of a “local detention facility personnel record” should be clarified.

### **5. Mission of the Board of State and Community Corrections (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.

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

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<sup>17</sup> Penal Code §832.8(a).

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.

A recent LAO report concluded that it was difficult to assess the BSCC's standards and inspection program "primarily because the program lacks a clearly defined mission and goals from which to measure specific program outcomes."<sup>18</sup> The report indicated that due to the lack of specificity in state law regarding the BSCC's mission or goals, "it is unclear whether the intended mission of the program is to assist local government in determining legal requirements for facility conditions, create statewide uniformity in facility operations, ensure humane and safe conditions, or something else" and that "[t]he absence of a defined program mission and goals in statute leaves significant discretion to BSCC and the administration in determining how to operate the program." The report further stated that the lack of a clear mission and goals undermines Legislative oversight due to the difficulty in assessing "whether the program fulfills an important state function that is consistent with its priorities"...or "whether the program is operating effectively and achieving its goals."

Among other recommendations, the report urged the Legislature to "establish clear program mission goals by establishing in statute that the mission of the standards and inspection program is to promote legal, humane and safe conditions for youth, inmates and staff in local detention facilities." To further this mission, the report recommended establishing four goals for the program: (1) maintain standards that help local leaders determine and meet legal requirements; (2) facilitate transparency and accountability through standards and inspections; (3) promote equitable provision of legal, humane, and safe conditions; and (4) provide technical assistance and statewide leadership to facilitate systemic improvement in detention conditions.<sup>19</sup> This bill partially adopts the above recommendation of the LAO report by expanding the BSCC's mission to include the promotion of legal and safe conditions for youth, inmates, and staff in local detention facilities.

## 6. Argument in Support

According to Californians for Safety and Justice:

SB 519 will increase oversight over local detention facilities by reactivating a local board of supervisor's authority to take-over the responsibility of jailing individuals if a Sheriff's Department is unresponsive in addressing the problems with its county jail. Additionally, SB 519 will make investigatory reports of an in-custody death publicly accessible, similar to other law enforcement public records. [...]

Recently, conditions at many local detention facilities have come under significant scrutiny as jail deaths continue to rise across the country (an increase of 11% since

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<sup>18</sup> "A Review of State Standards and Inspections for Local Detention Facilities." Legislative Analysts Office. February 2021, p.8. <https://lao.ca.gov/reports/2021/4371/Standards-Inspections-Local-Detention-Facilities-021621.pdf>

<sup>19</sup> *Ibid*, p. 9-12.

2000) and drug overdose becomes the fastest growing cause of death in jails. Many local governments are struggling with how to grapple with this crisis and the public is frustrated with the lack of accountability, the pace of progress, and sometimes, very simply, the lack of answers.

SB 519 will restore discretionary local control to a local supervisorial board in order to maintain higher levels of local accountability over what is happening in our jails and ensure that critical details about an in-custody death, including investigations, are made available to the public. SB 519 will help increase the public's understanding in order to promote better local policy decisions that will help save lives of those in custody and help to hold the Sheriff's Department accountable to the public.

**-- END --**