
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 762 **Hearing Date:** April 25, 2023
Author: Becker
Version: March 22, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Local detention facilities: safety checks*

HISTORY

Source: Author

Prior Legislation: AB 2343 (Weber), vetoed in 2022
SB 74 (Comm. on Budget & Fiscal Review), Ch. 30, Stats. 2013
SB 92 (Comm. on Budget & Fiscal Review), Ch. 36, Stats. 2011

Support: California Public Defenders Association

Opposition: None known

PURPOSE

The purpose of this bill is to require the Board of State and Community Corrections (BSCC) to update the standards for local correctional facilities to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check.

Existing law establishes the 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 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 requires the BSCC to establish minimum standards for local correctional facilities. Requires the BSCC to review those standards biennially and make any appropriate revisions. (Pen. Code, § 6030, subd. (a).)

Existing law requires that the minimum standards include, but not be limited to, health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training. (Pen. Code, § 6030, subd. (b).)

Existing law requires the BSCC to seek the advice of the State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested person in establishing minimum standards related to health and sanitary conditions. (Pen. Code, § 6030, subd. (g)(1).)

Existing law requires the BSCC to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. (Welf. & Inst. Code, § 210.)

Existing law requires the BSCC to inspect each local detention facility in the state biennially, at a minimum. (Pen. Code, § 6031, subd. (a).)

This bill requires the BSCC to update the standards for local correctional facilities to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check during the first regularly scheduled review of the standards after January 1, 2024.

This bill includes legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

Incarcerated people deserve the same rights to health and safety as any other resident under the law. Incarcerated individuals are particularly vulnerable to physical and mental health issues due to the harsh living conditions, overcrowding, and lack of access to proper medical care in jail. At the bare minimum, no person should endure undue bodily injury or death while in custody.

It is deeply concerning that there are not adequate protocols to protect the health and safety of incarcerated people. The conditions in county jails vary greatly from facility to facility, and with many standards up for broad interpretation, some facilities are unnecessarily endangering the well-being of those in custody. This lack of consistency creates an unfair and unequal system that disproportionately affects vulnerable populations, such as minorities and those with low-income backgrounds.

Ultimately, the state has a responsibility to ensure that all individuals, including those who are incarcerated, are treated with dignity and respect. This bill provides the BSCC with the opportunity to address these concerns by updating their standards and procedures to ensure that an incarcerated person is alive and well while in custody. In doing so, they shall establish a clear and consistent standard across the board for all county jails to abide by.

2. 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. The total estimated expenditures for all BSCC programs during the current budget year is \$1.07 billion (\$837 million General Fund). (<<https://www.ebudget.ca.gov/budget/2023-24/#/ExpendituresPositions/5227>>)

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 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 individuals, 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. In early 2020, Governor Newsom directed the BSCC to strengthen the state's oversight of county jails, and the BSCC has since developed an enhanced jail inspection process, which began in 2021. (<<https://www.bscc.ca.gov/wp-content/uploads/Info-Item-6-Targeted-Inspections-FINAL.pdf>>)

3. State Auditor's Report

This bill was introduced in response to a State Auditor report published last year on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department. (State Auditor, *San Diego County Sheriff's Department It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody* (February 3, 2022), Report 2021-109 available at <<http://auditor.ca.gov/pdfs/reports/2021-109.pdf>>.) Between 2006 and 2020, 185 people died in San Diego County's jails—one of the highest totals among counties in the state. Due to the high number of in-custody deaths, the Joint Legislative Audit Committee requested an audit of the San Diego County Sheriff's Department. With respect to safety checks, the report noted:

[P]erforming safety checks is a key component of ensuring the well-being of individuals in detention facilities. Conducting these checks—which state law requires hourly through direct visual observation—is the Sheriff's Department's most consistent means of monitoring for medical distress and criminal activity. Nonetheless, in our review of 30 in-custody deaths, we found instances in which deputies performed these checks inadequately. For example, based on our review of video recordings, we observed multiple instances in which staff spent no more than one second glancing into the individuals' cells, sometimes without breaking stride, as they walked through the housing module. When staff members eventually checked more closely, they found that some of these individuals

showed signs of having been dead for several hours. Although the Sheriff's Department's assistant sheriff of detentions indicated that the department has a process for periodically monitoring whether staff members adequately perform safety checks, it is not documented in policy. In contrast, the Riverside County Sheriff's Department has a formal policy that requires supervising staff to regularly review videos of safety checks being performed, and it is thus in a better position to assess the quality of safety checks.
(*Id.* at p. 2.)

The audit found that some of deficiencies of the Sheriff's Department's policies were the result of statewide corrections standards that were "not sufficiently robust." (*Id.* at pp. 2-3.) For example, regulations established by the BSCC "do not describe the actions that constitute an adequate safety check: rather, they simply state that safety checks must be conducted at least hourly through direct visual observation." (*Id.* at p. 3.)

The Auditor's report concluded with several key recommendations, including that the Legislature amend state law to require the BSCC to amend its regulations pertaining to safety checks. (*Id.* at p. 56.) The report specifically recommended that safety checks "include a procedure for checking to see that each individual is alive." (*Ibid.*) This bill would require the BSCC to update the standards for local correctional facilities to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check.

4. Argument in Support

The California Public Defenders Association writes:

Currently, the Board of State and Community Corrections provides minimal standards for local correction facilities regarding the health and safety of incarcerated persons. Currently, California Code of Regulations, Title 15, section 1027.5 requires a visual safety check at least once each hour and requires a plan for documentation. There is nothing mandating that the incarcerated person is confirmed to be alive and well, only that someone has visually looked at the person. ...

...

SB 762 has the potential to save many lives by requiring jailers to make sure the incarcerated individual is alive. Ultimately, this very simple change will save lives and perhaps even costs associated with receiving delayed medical care.

-- END --