
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 555 **Hearing Date:** April 2, 2019
Author: Mitchell
Version: February 22, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Jails and Juvenile Facilities: Telephone Services: Stores*

HISTORY

Source: Children's Defense Fund- California
Freedom for Immigrants
Friends Committee on Legislation of California
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
TransLatin@ Coalition
Women's Policy Institute
Young Women's Freedom Center

Prior Legislation: SB 1157 (Mitchell), vetoed in 2016
AB 920 (Gipson), Ch. 178, Stats. 2016
AB 1876 (Quirk), held in Senate Appropriations 2014
SB 542 (Price), Ch. 831, Stats. 2012
AB 1445 (Mitchell), Ch. 233, Stats. 2012
AB 439 (Ma), Ch. 210, Stats. 2008
SB 718 (Scott), Ch. 251, Stats. 2007
SB 81 (Comm. on Budget), Ch. 175, Stats. 2007
AB 230 (Leno), held in Assembly Appropriations in 2003
SB 1481 (Polanco), Ch. 146, Stats. 2002

Support: Access Support Network; American Civil Liberties Union of California; Anti-Recidivism Coalition; APLA Health; California Catholic Conference; California Coalition for Women Prisoners; California Immigrant Policy Center; California Low-Income Consumer Coalition; California Public Defenders Association; Center on Juvenile and Criminal Justice; Community Housing Partnership; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Essie Justice Group; Gender Justice LA; Initiate Justice; Legal Services for Prisoners with Children; Media Alliance; MILPA; Pangea Legal Services; Prison Policy Initiative; Project Rebound; Returning Home; San Francisco Public Defender's Office; Urban Peace Institute; Western Center on Law and Poverty; Worth Rises; Young Community Developers; Youth Law Center; 1 individual

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this legislation is to: 1) require that the sale prices of the items in a county jail canteen are offered for sale at the cost paid to the vendor supplying the items; 2) rename the inmate welfare fund to the incarcerated people's fund; 3) require that funds from the incarcerated people's fund be expended solely for the benefit, education, and welfare of the inmates confined within the jail; 4) prohibit commissions in telephone and communication service contracts for juvenile facilities and county jails; and 5) require such telephone and communication service contracts to be negotiated and awarded to the lowest cost provider.

Existing law provides that the sheriff of each county may establish, maintain and operate a store in connection with the county jail and for this purpose may purchase confectionery, tobacco and tobacco users' supplies, postage and writing materials, and toilet articles and supplies and sell these goods, articles, and supplies for cash to inmates in the jail. (Pen. Code, § 4025, subd. (a).)

This bill provides that articles offered for sale at the store are only available for purchase by incarcerated people and not employees of the jail.

Existing law requires that the sale prices of the articles offered for sale at the store be fixed by the sheriff. Requires that any profit be deposited in an inmate welfare fund to be kept in the treasury of the county. (Pen. Code, § 4025, subd. (b).)

This bill requires that the sale prices of the articles offered for sale at the store be offered at the cost paid to the vendor supplying the article.

Existing law requires that 10 percent of all gross sales of inmate hobbycraft be deposited in the inmate welfare fund. (Pen. Code, § 4025, subd. (c).)

This bill renames the inmate welfare fund to the incarcerated people's fund.

Existing law requires any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated to be deposited in the inmate welfare fund. (Pen. Code, § 4025, subd. (d).)

This bill adds communications service provider to the types of companies and service providers to which this provision applies.

Existing law requires that the money and property deposited in the inmate welfare fund be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Provides that any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Specifies that maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Prohibits inmate welfare funds from being used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county

expenses as determined by the sheriff to be in the best interests of inmates. Requires an itemized report of these expenditures to be submitted annually to the board of supervisors. (Pen. Code, § 4025, subd. (e)).

This bill requires that the money and property deposited in the incarcerated peoples' welfare fund be expended by the sheriff solely for the benefit, education, and welfare of the inmates confined within the jail. Prohibits the incarcerated peoples' welfare funds from being used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses. Requires an itemized report of these expenditures to be submitted annually to the board of supervisors.

This bill requires that any contract to provide telephone services or any communication services using video or other types of electronic devices to a person detained or sentenced to a jail or juvenile facility be negotiated and awarded to an entity that meets the jail or juvenile facility's technical, functional, and security requirements for services, and that provides the lowest cost of service to any person who pays for the telephone or communication service.

This bill authorizes a county to require a telephone service provider or other communication service provider to cover all costs related to the installation and maintenance of the telephone devices and services.

This bill prohibits a contract to provide telephone services or other communication services to any person detained or sentenced to a jail or juvenile facility from including any commission or other payment to the entity operating the jail or juvenile facility.

This bill requires telephone rates and other service rates to be reduced in response to the elimination of commission fees.

This bill requires all current telephone contracts and communication service contracts that provide telephone services or other communication services to any person detained or sentenced to a jail or juvenile facility to be amended to eliminate commissions and other payments. Exempts contracts that provide free communication services from this requirement.

This bill provides the following definitions:

- "Jail" means a county jail, a municipal jail, or a privately operated jail.
- "Juvenile facility" means any juvenile hall, camp, ranch, or other facility where a person is detained as a result of a petition pursuant to specified provisions of existing law pertaining to minors who become wards of the court.
- "Commission or other payment" means any payments made to provide an incentive for the procurement of contracts, but does not include grants and other payments that do not increase the cost of telephone calls or communication services billed to consumers.

COMMENTS

1. Need for This Bill

According to the author:

Under California's current system, local governments contract with private companies to provide goods and services inside local jails. The current contracting system allows both entities to gain profits by placing a heavy financial burden on both the incarcerated people and their loved ones to use the offered services.

One service provided is communications between people incarcerated in county jails and their loved ones, but the high costs makes it difficult for these families to maintain strong relationships and disrupts their economic stability. While the cost of phone calls from California state prisons was capped by previous legislation, the cost of calls and other communications from county jails remains unaddressed. Currently, these private communications providers have learned how to take advantage of local government contracting. The result is that jails sign contracts with high rates that are particularly profitable for the providers. These companies are effective at drafting self-serving contracts, while jail staff with fewer resources are at a disadvantage in negotiating sophisticated telecommunications contracts, and may even rely on language suggested by the providers. Meanwhile, companies also slip in hidden fees that exploit families and shortchange facilities.

A study conducted by the Ella Baker Center reports that 1 in 3 families went into debt paying for court costs, phone rates, and other financial requirements in supporting their incarcerated loved ones. The cost of communications inside jails falls most heavily on the families of incarcerated people which are disproportionately low income women of color. Also, LGBTQ+ people, especially transgender women of color, are uniquely vulnerable to abuse and mistreatment by both staff and other prisoners while incarcerated. Without an accessible way of communicating with parties on the outside, this abuse often is not addressed.

Additionally, the items sold at commissary stores are sometimes contracted with third-party companies and prices are gouged to the detriment of incarcerated people and their loved ones. Often times, the items purchased at these stores are basic necessities such as toothpaste, soap, and razors.

Funds collected from commissary store sales and phone and electronic communications are deposited into the county "Inmate Welfare Fund" (IWF) which originally was required to be used solely for the benefit, education, and welfare of incarcerated individuals. Amendments to statutory language governing the expenditure of "inmate welfare funds" have expanded the permissible use of these funds for things beyond the scope of the fund's original intent. For example, some counties have bought security cameras and purchased transport vans for jail-to-court commutes.

SB 555 aims to improve accessibility to basic necessities and communication services between incarcerated individuals and people on the outside in order to help maintain strong relationships, promote economic stability, and ensure more successful reentry processes.

2. Canteen

Existing law provides that each county sheriff may establish, maintain, and operate a store within the jail where the inmates can purchase toiletries, stationery, snacks, and other personal items. Under existing law, the sheriff sets the prices for the items available for sale at the jail store, also known as the canteen or commissary. Advocates argue that canteen items have unreasonably high prices compared to the prices of the same or similar items available to the general public. However, some of the state's sheriff department websites report that the pricing of canteen items is similar or identical to that of convenience stores. (*See* <<https://www.fresnosheriff.org/jail/commissary.html>>; <<http://www.ocsd.org/divisions/custody/inmate/faq#1862>> [as of Mar. 27, 2019].)

This bill would require that the sale price of a canteen item be offered for sale at the cost paid to the vendor supplying the item.

3. Phone Service in Correctional Facilities

One of the primary ways that people who are incarcerated maintain contact with loved ones is via phone calls. Prisons and jails contract with private companies to provide and manage telephone service for their institutions. These phone systems provide features such as enabling certain numbers from being blocked and allowing correctional staff to monitor calls. The price of jail and prison phone calls has come under scrutiny in the past several years. (*See* <<https://www.forbes.com/sites/janetwburns/2019/02/28/in-2019-phone-calls-remain-a-luxury-in-jail/#765dcc9b1185>>; <<https://www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>>; <<https://money.cnn.com/2016/03/09/technology/prison-phones/index.html>>.) According to a New York Times article published in 2015:

[T]he prison phone system is now a \$1.2 billion-a-year industry dominated by a few private companies that manage phones in prisons and jails in all 50 states, setting rates and fees far in excess of those established by regular commercial providers. The business is so considerable — some 500 million prison and jail phone calls totaling more than six billion minutes in 2014 — that it has caught the eye of private equity firms. (<<https://www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>>.)

Advocates argue that inmates' phone call rates are excessively high due in part to the concession fees, also known as commissions, that phone service providers pay to state and local prison systems in exchange for exclusive contracts. In 2007, the Legislature approved SB 81 (Comm. on Budget and Fiscal Review), Ch. 175, Stats. of 2007, as a budget trailer bill. Among its many provisions, SB 81 directed a four-year phase out of concession fees in phone service contracts for

state correctional facilities. According to a past analysis of this committee, “SB 81 eliminated the \$26 million concession fee the vendor paid to the State General Fund by reducing it by \$6.5 million each fiscal year until it became zero in FY 2010/2011.” (Sen. Com. on Public Safety, Analysis of Assem. Bill 1876 (2013-2014 Reg. Sess.) as amended Jun. 10, 2014, p. 7.) As a result, phone rates for calls made from the state’s prisons decreased significantly. (*Id.*)

The concession fees of the state’s county jails were not affected by SB 81. A recent paper published by the Prison Policy Initiative highlighted the disparity between phone rates in local correctional facilities and state prisons throughout the country.

(https://www.prisonpolicy.org/phones/state_of_phone_justice.html.) The paper reported the following California-specific data: The highest cost of a 15-minute intrastate call from a jail in 2018 was \$17.80, the average cost of a 15-minute intrastate call from a jail was \$5.70, and the cost of a 15-minute intrastate call from a state prison was \$2.03. (*Id.*) High phone rates have been the subject of numerous lawsuits. (See <http://www.ktvu.com/news/3-more-bay-area-counties-sued-over-high-jail-phone-rates>; <https://www.scpr.org/news/2015/11/19/55762/lawsuit-filed-against-excessive-phone-rates-for-ja>) [as of Mar. 27, 2019].)

SB 555 seeks to address the issue of high phone rates. Specifically, this bill requires that any contract to provide phone services or any communication services using video or other types of electronic devices to a person detained or sentenced to a jail or juvenile facility be negotiated and awarded to an entity that meets the jail or juvenile facility’s technical, functional, and security requirements for services, and that provides the lowest cost of service to any person who pays for the telephone or communication service. This bill also prohibits a contract to provide phone services or other communication services to any person detained or sentenced to a jail or juvenile facility from including any commission or other payment to the entity operating the jail or juvenile facility. This bill additionally requires telephone rates and other service rates to be reduced in response to the elimination of commission fees. Finally, this bill requires all current phone contracts and communication service contracts that provide phone services or other communication services to any person detained or sentenced to a jail or juvenile facility to be amended to eliminate commissions and other payments.

4. Inmate Welfare Fund (IWF)

Under current law, profits from the sale of canteen items as well as any money, refund, rebate, or commission received from a telephone company providing inmate phone services must be deposited into the inmate welfare fund (IWF). Existing law requires these funds be expended by the sheriff *primarily* for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be used for the maintenance of county jail facilities, including but not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. There are some restrictions to the use of IWF funds. For example, IWF funds may not be used to pay for required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses. However, IWF funds may be used to augment required county expenses as determined by the sheriff to be in the best interests of inmates

Advocates argue that IWF funds have not been used appropriately. Management of these funds has been the subject of grand jury inquiries across the state. (*See* http://www.scsocourt.org/court_divisions/civil/cgj/2003/MgmtInmateWelfareFunds.pdf); <http://www.ocgrandjury.org/pdfs/GJInmate.pdf>); <https://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2015-2016/InmateWelfareFundAudit.pdf>); https://www.sanmateocourt.org/documents/grand_jury/2013/InmateWelfareTrustFund.pdf.) Allegations of misuse of funds has also resulted in litigation, including a class action in Santa Clara County. (*See* <https://www.mercurynews.com/2008/09/12/county-jail-inmates-will-get-expanded-services-under-settlement-agreement/>) [as of Mar. 27, 2019].)

In order to limit the sheriff's discretion with respect to IWF expenditures, this bill requires that the money and property deposited in the IWF be expended by the sheriff *solely* for the benefit, education, and welfare of the inmates confined within the jail.

5. Argument in Support

The Ella Baker Center for Human Rights writes:

Under California's current system, each of the 58 county sheriff's independently negotiate contracts with private companies to provide services meant to benefit incarcerated people, such as communication services and commissary items. However, in large part due to the lack of regulation on these contracts, private companies are charging unaffordable rates for phone calls, video visitations, and other forms of electronic communications. This has also influences the prices of goods sold in jail commissaries.

California county jails have been shown to charge up to \$17 for a 15 minute phone call, which is nearly 3 times as high as the cost in California state prisons. Furthermore, markups on commissary items make it difficult, if not impossible, for incarcerated people to afford basic necessities. The high cost of utilizing these services disrupts not only the economic stability of incarcerated people, but their families and support systems on the outside.

Further, the profit that is currently generated from the high cost of these services is placed into the Inmate Welfare Fund (IWF). The IWF is intended to be used primarily for the wellbeing of incarcerated people, but county audits have revealed that spending proves otherwise. Although the cost of these services are impacting one of the most economically marginalized populations in California, there is little to no reinvestment of these revenues into their wellbeing while incarcerated, or after they are released.

These costs have devastating impacts on families and communities, specifically those financially supporting incarcerated loved ones. Research shows that 1 in 3 families go into debt due to the costs of phone calls and visits alone....

The ability of private companies to profiteer off of incarcerated people, their loved ones, and their support systems is an issue that has been overlooked for far

too long. The Jail FACTS Act will enhance incarcerated people and their families' ability to reach economic stability.

6. Argument in Opposition

According to the California State Sheriffs' Association:

This bill would specify that contracts for inmate commination services must be awarded to an entity that meets the facility's "technical, functional, and security requirements" and provides the lowest cost of service to the person who pays for the service. This language could disqualify a contract that may provide a better overall service and instead promote an inferior contract that happens to offer a slightly lower rate for phone calls.

SB 555 additionally prohibits certain payments from phone providers to correctional facility operators. Under existing law, any such payment is required to be deposited in the inmate welfare fund (IWF). Existing statute specifies what may be paid for by the IWF, and as a practical matter, IWFs pay for inmate education, religious materials, vocational training, recreational equipment, and clothing and hygiene supplies for indigent inmates who are being released. Additionally, the bill provides that goods sold at the "jail store" or canteen must be sold at cost, despite the fact that current law requires any profit to be deposited in the IWF. Finally, the measure eliminates flexibility on how IWF funds may be spent despite current statutory protections ensuring the resulting programs benefit inmates.

It is highly unlikely that counties will be able to backfill the funds that will be lost if this bill is approved. This bill will jeopardize the programs funded by IWFs given the important role they play in ensuring the success of Realignment.

-- END --