
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1320 **Hearing Date:** June 27, 2017
Author: Bonta
Version: May 30, 2017
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *State Prisons: Private, For-Profit Administration Services*

HISTORY

Source: Author

Prior Legislation: SB 1289 (Lara), 2016, vetoed.
SB 843 (Budget Committee), Ch. 43, Stats. of 2016
SB 105 (Steinberg), Ch. 310, Stats. of 2013

Support: AFSCME; California Attorneys for Criminal Justice; California Civil Liberties Advocacy; California Correctional Peace Officers Association; California Public Defenders Association; Los Angeles County Professional Peace Officers Association; National Association of Social Workers; SEIU – Local 1000

Opposition: None known

Assembly Floor Vote: 62 - 16

PURPOSE

The purpose of this bill is to prohibit the California Department of Corrections and Rehabilitation (CDCR) from entering into or renewing contracts with private prisons located out of state by specified dates, and eliminates their use by January 1, 2021.

Existing law authorizes the Secretary of CDCR to enter into agreements with private entities to obtain secure housing capacity within California. Sunsets this authority on January 1, 2020. (Pen. Code, § 2915, subs. (a) & (d).)

Existing law authorizes the Secretary of CDCR to enter into agreements with private entities to obtain secure housing capacity in another state. (Pen. Code, § 2915, subs. (b) & (d).)

Existing law prohibits CDCR from operating its own facility outside of California. (Pen. Code, § 2915, subd. (b).)

Existing law allows the Secretary of CDCR to enter into an agreement with a city, county, or city and county, to permit transfer of prisoners in the custody of the secretary to a jail or other adult correctional facility. Sunsets this authority on January 1, 2020. (Pen. Code, § 2010, subs. (a) & (h).)

This bill prohibits CDCR from entering into a contract with a private, for-profit prison located out of state on or after January 1, 2018.

This bill prohibits CDCR from renewing existing contracts with private, for-profit prisons located out of state on or after January 1, 2020.

This bill requires all state prison inmates under the jurisdiction of CDCR to be removed from for-profit prison facilities located out of state by January 1, 2021.

COMMENTS

1. Need for This Bill

According to the author:

Current law authorizes the California Department of Corrections and Rehabilitation (CDCR) to contract with private, for-profit prison corporations to house inmates both in and out-of-state.

Contracting with out-of-state private prisons was a temporary solution to address the severe problem of inmate overcrowding, to comply with a federal court order to reduce the prison population to 137.5% of design capacity, and avoid the early release of inmates.

On February 10, 2014 the Court also ordered the state to seek ways to reduce the number of inmates housed in the out of state prisons to the extent feasible.

As a result of voter initiatives like Proposition 47 and Proposition 57, there is a decline in inmate population that allows room for the transfer of out-of-state inmates to in-state facilities, in accordance with the Court order.

California currently houses inmates in two out-of-state privately operated for-profit prisons, located in Arizona and Mississippi. The out-of-state inmate population has decreased from approximately 9,000 in 2014 to 4,272 inmates in May 2017.

As of May 2017, California's inmate population was at a 135% of design capacity, which falls under the 137.5% population cap ordered by the three-judge court panel in 2009.

Now that we are under the court ordered cap and will be seeing inmate reductions due to Proposition 57 and other measures, it is time to establish a timeline to phase out the use of out-of-state private, for-profit prisons.

AB 1320 will begin to redirect our criminal justice system to invest in and prioritize effective rehabilitative programs, which will minimize recidivism rates and maximize successes for inmates upon their reentry into society.

2. Court-Ordered Limits on Prison Overcrowding

In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, 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.

CDCR is currently in compliance with the three-judge panel’s order on the prison population. CDCR’s February 2017 monthly report on the prison population notes that the in-state adult institution population is currently 114,124 inmates, which amounts to 134.1% of design capacity. While CDCR is currently in compliance with the three-judge panel’s order on the prison population, the state needs to maintain a “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 Governor’s January proposed budget for 2017-2018 anticipates that “[t]he adult inmate average daily population is projected to decrease from 129,015 in 2016-17 to 128,159 in 2017-18, a decrease of 856 inmates, or 0.7 percent. ...The decrease in the adult inmate population is due to a projected reduction related to the implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016, which offsets a projected increase in felon admissions. (<http://ebudget.ca.gov/2017-18/pdf/GovernorsBudget/5210.pdf>)

However, as of February 28, 2017, there were currently 6,072 inmates under the jurisdiction of CDCR housed in for-profit prisons in California. Additionally, there are still 4,400 prisoners being housed out of state, in Mississippi and Arizona. (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1702.pdf)

This bill would prohibit the housing of prisoners in for-profit prisons, both in and out of state, by January 1, 2028. Additionally, contracts could not be renewed after January 1, 2018. New contracts could also not be entered into as of that day. This bill does not prohibit CDCR from contracting with city and county jails.

CDCR has provided this Committee with the following information regarding contract term dates:

CONTRACT	CONTRACT TERM
In-State Private	
Golden State MCCF	November 1, 2013 – June 30, 2018
Desert Valley MCCF	September 20, 2013 – June 30, 2018
Central Valley MCCF	September 20, 2013 – June 30, 2018
McFarland (Females)	April 1, 2014 – June 30, 2018
Out-of-State Private	
Tallahatchie (Mississippi)	January 7, 2008 – June 30, 2019
La Palma (Arizona)	January 7, 2008 – June 30, 2019

Will CDCR be able to maintain a durable solution to prison overcrowding without housing inmates in private, for-profit facilities within the timelines established in this bill?

3. Concerns with Private Prisons

The U.S. Department of Justice’s Office of the Inspector General conducted an investigation of private prisons and issued a report last year. The investigation found that private prisons were less safe than federal prisons, poorly administered, and provided limited long-term savings for the federal government. For example, the contract prisons confiscated eight times as many contraband cell phones annually on average as the federal institutions. Private prisons also had higher rates of assaults, both by inmates on other inmates and by inmates on staff. Additionally, two of the three contract prisons inspected by the Inspector General’s Office discovered they were improperly housing new inmates in Special Housing Units (SHU), which are normally used for disciplinary or administrative segregation, until beds became available in general population housing. (See *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons*, August 2016, <<https://oig.justice.gov/reports/2016/e1606.pdf#page=2>.>)

As a result, under the Obama Administration, the U.S. Department of Justice announced that it would end its reliance on for-profit prisons run by companies such as Corrections Corporation of America and Geo Group.¹

It should be noted that the for-profit prisons inspected by the U.S. Department of Justice were operated by three private corporations: Corrections Corporation of America, GEO Group, Inc., and Management and Training Corporation. CDCR has informed this Committee that it also contracts with GEO Group and the Corrections Corporation of America. The out of state prisons are owned by Corrections Corporation of America, and the Geo Group has the contracts for all the in state beds.

¹ The newly-appointed Attorney General, Jeff Sessions, has rescinded the order. (<http://www.npr.org/sections/thetwo-way/2017/02/23/516916688/private-prisons-back-in-mix-for-federal-inmates-as-sessions-rescinds-order>)

4. Lack of Transparency

For-profit detention facilities are accountable to their shareholders and not the people of the State of California. For example, for-profit detention facilities claim exemptions to the public disclosure requirements under the Freedom of Information Act (FOIA) (5 U.S.C. Sec. 552) because they are private corporations, which makes the potentially unlawful conduct occurring within the facility hidden from discovery. These private detention facilities similarly claim an exemption to California's State counterpart, the California Public Records Act (CPRA) (Gov. Code Sec 6250 et seq).

5. Argument in Support

According to the Los Angeles County Professional Peace Officers Association:

California houses more than 9,000 inmates in ten privately-operated, for-profit prisons, including two located out-of-state in Arizona and Mississippi. For the 2017-2018 fiscal year, the Governor has proposed to set aside \$247,053 million for contracted private, for-profit correctional facilities.

Studies show a heightened level of violence against prisoners in private institutions. This may reflect in part the higher rate of staff turnover in private prisons, which can result in inexperienced guards walking the tiers. The ability of private prison companies to capture taxpayer dollars results in handsome rewards for their top executives. The ACLU reported, in 2010, CCA's President and CEO received more than \$3.2 million in executive compensation, and GEO's Chairman and CEO received nearly \$3.5 million.

Not only does privatization fail to save taxpayer money, but private prison companies, as for-profit institutions, are strongly incentivized to cut corners and thereby maximize profits, which may come at the expense of public safety and the well-being of prisoners.

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