
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1782 **Hearing Date:** June 14, 2022
Author: Jones-Sawyer
Version: February 3, 2022
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Jails: commissary*

HISTORY

Source: Author

Prior Legislation: SB 555 (Mitchell), vetoed in 2020
AB 920 (Gipson), Ch. 178, Stats. 2016
SB 542 (Price), Ch. 831, Stats. 2012
AB 1445 (Mitchell), Ch. 233, Stats. 2012
SB 718 (Scott), Ch. 251, Stats. 2007
SB 1481 (Polanco), Ch. 146, Stats. 2002

Support: California Public Defenders Association; Essie Justice Group; Initiate Justice; Media Alliance; National Association of Social Workers, California Chapter

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 45 - 10

PURPOSE

The purpose of this bill is to rename the inmate welfare fund to the incarcerated peoples' welfare fund and require money in the fund to be expended solely for the benefit, education, and welfare of the incarcerated population.

Existing law authorizes the sheriff of each county to establish, maintain and operate a store in connection with the county jail and for this purpose to 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).)

Existing law provides that any profit from the store be deposited in an inmate welfare fund to be kept in the treasury of the county. (Pen. Code, § 4025, subd. (b).)

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

Existing law requires that 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).)

Existing law requires that the money and property deposited in the inmate welfare fund is to be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. (Pen. Code, § 4025, subd. (e).)

Existing law provides that any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities, as provided. (Pen. Code, § 4025, subd. (e).)

Existing law prohibits the use of the inmate welfare funds 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).)

Existing law authorizes the sheriff to expend money from the inmate welfare fund to provide indigent inmates, prior to release from the county jail or any other adult detention facility under the jurisdiction of the sheriff, with essential clothing and transportation expenses within the county or, at the discretion of the sheriff, transportation to the inmate's county of residence, if the county is within the state or within 500 miles from the county of incarceration. (Pen. Code, § 4025, subd. (i).)

This bill renames the inmate welfare fund to the incarcerated peoples' welfare fund and requires money in the fund to be expended solely for the benefit, education, and welfare of the incarcerated population.

COMMENTS

1. Need For This Bill

According to the author:

Currently, profits from the sale of canteen items or money generated from telephone services are deposited into counties' inmate welfare funds (IWF), which should be used by the sheriff primarily for the benefit, education, and welfare of the incarcerated peoples. Presently, unused funds may go to facility maintenance, salaries, and benefits as deemed appropriate by sheriff. However, reports have shown the use of these funds have gone beyond the scope of the fund's original intent.

In July 2021, reports found that the Sacramento County Sheriff's Department used the fund to pay for trips to a Lake Tahoe resort and other flights and lodging associated with conferences. A preceding LASD audit confirmed an inadequate multi-year spending plan as well as the displacement of funds to cover maintenance costs. Similar misuse of funds have been reported throughout the state. In April 2016, an audit of San Diego Sherriff Department found

unallowable expenses funded by the IWF, as well as an over \$15,000 electric vehicle non-budgeted purchase that was not properly approved.

Reports have cited that in some years, more than \$9 out of every \$10 from the fund are spent on personnel salaries, benefits, training, and facility maintenance. When salaries and maintenance account for upwards of 93% of the money spent from the fund, but only 31%, at most, account for beneficial programs such as the law library and incarcerated peoples' education, it is evident that sheriffs' discretion does not benefit those the fund is intended to support.

By requiring the funds to be expended solely for the benefit, education, and welfare of people experiencing incarceration, California will seek greater accountability over IWFs in order to ensure a more successful reentry of incarcerated people into their community. Furthermore, the use of the term "inmates" is both outdated and dehumanizing to those experiencing incarceration. As such, the counties' funds must be renamed, consistent with our belief that incarceration does not define a person.

AB 1782 will rename counties' "Inmate Welfare Funds" to "Incarcerated Peoples' Welfare Funds." Additionally, this bill will ensure that money deposited in the fund be expended by the sheriff solely, not primarily, for the benefit, education, and welfare of the incarcerated peoples confined in the jail. AB 1782 seeks greater responsibility through reinvestment in order to ensure a more successful reentry for the incarcerated population.

2. Inmate Welfare Fund

The inmate welfare fund (IWF) is funded largely by commissions received from contracted telephone services as well as commissary sales and vending machine sales. Existing law requires these funds be expended by the sheriff *primarily* for the benefit, education, and welfare of the individuals confined within the jail. Any funds that are not needed for the welfare of the incarcerated population 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 incarcerated individuals, 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 individuals 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 incarcerated individuals.

Advocates have argued 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.sccourt.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 Jun. 7, 2022].)

In 2021, the Sacramento Bee reported that since 2014, the Sacramento County Sheriff's Department used money from the IWF to purchase equipment for the sheriff's office, fund travel expenses, and supplement employee salaries. The investigation found that in some years, more than 9 out of every 10 dollars from the IWF was spent on salaries, benefits, training, and facility maintenance. (Jason Pohl & Michael Finch II, *How Sacramento Sheriff Used Inmate Welfare Fund for Cameras, Fencing—and a Tahoe Resort* (July 13, 2021) available at <<https://www.sacbee.com/news/investigations/the-public-eye/article252730348.html>>.) The article noted that during the time period examined, programs that directly benefited the incarcerated population accounted for, at most, 31% of IWF expenditures.

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.

3. SB 555 Veto Message

SB 555, of the 2019-2020 Legislative Session, would have required that the sale prices of the items in a county jail canteen be sold at the cost paid to the vendor supplying the items, required that funds from the IWF be expended solely for the benefit, education, and welfare of the persons confined within the jail, and prohibited commissions in telephone and communication service contracts for juvenile facilities and county jails.

Governor Newsom vetoed the bill stating:

This bill would limit the amount that a county jail can charge for items in the jail canteen and the per minute rate that can be charged for phone calls and video communications. It would also prohibit commission provisions in telephone and communications service contracts and would require such telephone and communication service contracts to be negotiated and awarded to the lowest cost provider.

While I strongly support the goals of this bill - reducing the financial stress that families of those in jail face and supporting the ability of those incarcerated to remain in contact with their families - I cannot support this bill in its current form. I am concerned it will have the unintended consequence of reducing important rehabilitative and educational programming for individuals in custody. I am committed to working with the Legislature and stakeholders to address this issue in the next legislative session in a manner that mitigates impacts on programming.

4. Argument in Support

According to the California Public Defenders Association:

CPDA members can attest based on our close relationships with those entangled in the criminal legal system that referring to people who are incarcerated as 'inmates' dehumanizes them. Dehumanization of people who are incarcerated is an antiquated practice that perpetuates harm. Language matters. While culture cannot change overnight, changing the language used by the Legislature sends a strong message.

Additionally, AB 1782 will mandate that the money in the incarcerated peoples' welfare fund is used for its intended recipients rather than being misused or channeled for other purposes.

5. Argument in Opposition

The California State Sheriffs' Association writes:

By way of background, this proposed change cannot be considered in a vacuum. It is important to note that the California Public Utilities Commission recently capped inmate phone rates for intrastate calls at \$0.07 per minute. This change, built on the arbitrary selection of a rate that has little to do with the realities of providing jail inmate communication services, stands to decimate inmate welfare funds around the state.

Understanding that IWF balances have and will continue to decrease, eliminating flexibility within this program will not benefit incarcerated persons. Rather, eliminating the ability of these funds to be spent on things like salaries will make it more difficult for jails to provide these programs because someone has to deliver the programs. Any changes to these statutes should consider a full accounting of the fund conditions and consideration of providing state resources to backfill funds that are no longer available or not allowed to be used for certain functions.

Existing law already requires sheriffs to submit an itemized report of these expenditures annually to the board of supervisors, thereby fostering transparency and accountability.

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