
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 356 **Hearing Date:** April 28, 2015
Author: Hancock
Version: February 24, 2015
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Opportunity Yard Pilot Project*

HISTORY

Source: Author

Prior Legislation: None

Support: California Attorneys for Criminal Justice; California Public Defenders Association

Opposition: None Known

PURPOSE

The purpose of this bill is to create an “Opportunity Yard Pilot Project” in 5 prisons, emphasizing promising and evidence-based practices and programming in a separate, special purpose prison housing unit setting designed to strengthen the ability of younger inmates to successfully reenter society upon completion of their prison sentence, as specified.

Current law creates in state government the California Department of Corrections and Rehabilitation (CDCR), to be headed by a secretary, who shall be appointed by the Governor, subject to Senate confirmation, and shall serve at the pleasure of the Governor. (Government Code § 12838.) CDCR shall consist of Adult Operations, Adult Programs, Health Care Services, Juvenile Justice, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board. (*Id.*) As explained in the Legislative Analyst's Office Analysis of the Governor's 2015-16 Proposed Budget:

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 4, 2015, CDCR housed about 132,000 adult inmates in the state's prison system. Most of these inmates are housed in the state's 34 prisons and 43 conservation camps. About 15,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR's Division of Juvenile Justice, which includes three facilities and one conservation camp.

The Governor's budget proposes total expenditures of \$10.3 billion (\$10 billion General Fund) for CDCR operations in 2015-16.

This bill would require CDCR to “establish the Opportunity Yard Pilot Project for offenders under the jurisdiction of the department who have been sentenced to a term of imprisonment under Section 1170 and are likely to benefit from placement in a program designed to provide comprehensive educational and rehabilitative programming based on current best practices consistent with the purposes and requirements of this section.”

This bill would provide that the mission of this pilot would be to “implement promising and evidence-based practices and programming in a separate, special purpose prison housing unit setting designed to strengthen the ability of eligible inmates to successfully reenter society upon completion of their prison sentence. The pilot program shall integrate evidence-based practices of supervision, treatment, and rehabilitation in a positive, safe, and purposeful correctional environment.”

This bill would require that this pilot “be initiated in at least five prisons, as selected by the secretary, for at least three years. At least two of the prisons chosen shall be Level III general population facilities. At least two of the prisons shall be Level IV general population facilities.”

This bill would require CDCR to “develop and implement criteria for selecting inmates appropriate for housing in the opportunity yards that shall be consistent with all of the following:

- (1) Inmate placement in the program shall be voluntary;
- (2) To the extent feasible based upon a prison site’s population and eligible inmates, the program shall be comprised of at least a majority of offenders between 18 and 26 years of age, inclusive, with a parole consideration hearing date not exceeding five years from the date of their placement in the program;
- (3) Placement in the program shall be limited to inmates who demonstrate a commitment to strive daily for self-improvement, succeed in correctional programming, and achieve permanent life change; and
- (4) Participation in the program may be limited to inmates who agree to be free from disciplinary action; who agree to enroll, participate in, and complete a high school diploma, Associate of Arts, or Bachelor of Arts college degree, or vocational trade school; and who agree to complete job-training curriculum, maintain a job on the opportunity yard campus, and to serve as a peer mentor.”

This bill would require CDCR to “develop and implement appropriate selection criteria and training to ensure that staff assigned to an Opportunity Yard are highly motivated and skilled in fulfilling the mission of the program.”

This bill would require CDCR to “develop and implement programming and curriculum for the program consistent with this section.”

This bill would require CDCR to “develop and implement a plan for evaluating the program and identifying outcome measures for program participants.”

This bill would authorize CDCR to “adopt emergency regulations to implement this section initially, and shall subsequently adopt permanent regulations that make appropriate changes in policies and procedures to implement this section.”

This bill would sunset these provisions on January 1, 2021.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

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.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."(Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "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 Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

Rehabilitation is one the foundations of the Department of Corrections and Rehabilitation's stated purpose. Not only will rehabilitative efforts lead to reduced

recidivism once inmates return to our communities, but they will also ensure safer prisons for both inmates and custodial staff.

However, in many cases, rehabilitation is hard to achieve unless there is a voluntary decision on the part of the inmate; a conscious choice to better himself or herself. But scarcity of resources is also a concern. In my cases, inmates who wish to receive programming to rehabilitate cannot because of security concerns or lack of programming availability due to funding or the geographical location of the prison.

SB 356 is meant to address both concerns. It creates an “Opportunity Yard” Pilot Project in at least five prisons. The Opportunity Yard program, which provides additional education and programming opportunities, is only open to inmates who voluntarily wish to participate. But it also creates a separate facility that seeks to provide inmates the programming they desire in an environment that is devoted primarily to that mission. There will also be dividends in increased security situation in providing a separate facility with inmates who wish to eschew the politics of the general population yard.

2. Prison Population; Prison Housing Placement

In its February analysis of the Governor’s criminal justice proposals for the 2015-16 fiscal year, the Legislative Analyst’s Office stated:

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 4, 2015, CDCR housed about 132,000 adult inmates in the state’s prison system. Most of these inmates are housed in the state’s 34 prisons and 43 conservation camps. About 15,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR’s Division of Juvenile Justice, which includes three facilities and one conservation camp.

This month, in its status report to the federal Three-Judge Court referenced above, CDCR reported that as of April 8, 2015, 111,863 inmates were housed in the State’s 34 adult institutions, which amounts to 135.3% of design bed capacity, and 8,394 inmates were housed in out-of-state facilities.

CDCR inmates generally are placed in housing facilities with a security level that corresponds to the inmate’s placement score range:

- (1) An inmate with a placement score of 0 through 18 shall be placed in a Level I facility.
- (2) An inmate with a placement score of 19 through 35 shall be placed in a Level II facility.
- (3) An inmate with a placement score of 36 through 59 shall be placed in a Level III facility.
- (4) An inmate with a placement score of 60 and above shall be placed in a Level IV facility.

CDCR's website provides the following description of these facilities:

- Level I - Facilities and Camps consist primarily of open dormitories with a low security perimeter.
- Level II - Facilities consist primarily of open dormitories with a secure perimeter, which may include armed coverage.
- Level III - Facilities primarily have a secure perimeter with armed coverage and housing units with cells adjacent to exterior walls.
- Level IV - Facilities have a secure perimeter with internal and external armed coverage and housing units or cell block housing with cells non-adjacent to exterior walls.

In its most recent report, September 14, 2014, the California Rehabilitation Oversight Board (C-ROB) noted:

The department designated and activated enhanced programming yards to incentivize positive behavior at seven institutions. Program enhancements provide primarily volunteer-based and self-help options and may include access to college degree programs, additional self-help groups, and hobby craft programs.

The implementation process did not require mass transfers of inmates from or to designated facilities. Inmates residing in an enhanced programming yard were allowed to remain, provided they were willing to meet the program's expectations. Inmates who did not wish to participate were able to transfer to a non-enhanced-programming yard while inmates who had been identified as possible participants were evaluated during the classification process at their annual or program review. Placement in enhanced programming yards is based on an inmate's behavior and willingness to meet programming expectations. . . . ¶

The department designated 13 institutions as reentry hubs to concentrate program resources in pre-release programs to prepare inmates about to return to their communities. Reentry hubs increase access to rehabilitative programs that will reduce recidivism by better preparing inmates to be productive members of society. In doing so, they should help lower the long-term prison population and save the State money. Reentry hubs provide substance abuse treatment, cognitive behavioral treatment, and transitions programs to inmates who are within four years of release and demonstrate a willingness to maintain appropriate behavior to take advantage of such programming.

The department has met its target for activating 13 reentry hubs with substance abuse treatment programs, cognitive behavioral treatment, and transitions programs. Five of the reentry hubs are still awaiting activation of transitions programs. One reentry hub does not yet have qualified counselors to deliver its substance abuse treatment program, and another reentry hub is in the process of hiring facilitators for its cognitive behavioral treatment program. . . . ¶

Program outcomes will be closely monitored to determine the effectiveness of the reentry hubs and the enhanced programming yards in comparison with the results prior to realignment. Key performance indicators include program enrollment,

attendance, and completion, as well as regression, which the department currently has available only for substance abuse programs but anticipates eventually being available for education and other programs in future reports. Key performance indicators are reviewed monthly by executive staff, and results are shared with wardens and institutional program staff. Quarterly meetings are conducted with institution staff to discuss performance in all of these areas. Significant improvement, especially in degree completions, has been made as a result of these reviews.¹

As explained above, this bill would pilot intensive programming yards for younger inmates expected to parole within 5 years of placement in the program. Younger felons have been demonstrated to have the highest recidivism rates, with inmates released at age 24 or younger returning to prison at a rate of 67.2 percent.² In addition, researchers have noted that, “An abundance of research shows positive effects of cognitive-behavioral approaches with offenders. At the same time that cognitive-behavioral treatments have become dominant in clinical psychology, many studies report that recidivism has been decreased by cognitive-behavioral interventions.”³ This bill appears intended to include these kinds of treatment in the pilot it proposes.

WOULD THIS BILL COMPLEMENT AND ENHANCE THE EXISTING PROGRAMS IN CDCR PRISONS?

-- END --

¹ September 15, 2014 Report, C-ROB (http://www.oig.ca.gov/media/crob/reports/C-ROB_Annual_Report_September_15_2014.pdf.)

² CDCR 2013 Outcome Evaluation Report (January 2014) (http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf.)

³ Milkman and Wanberg, *Cognitive Behavioral Treatment A Review and Discussion for Corrections Professionals* (May 2007) (National Institute of Corrections, DOJ) (<http://static.nicic.gov/Library/021657.pdf>.)