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SB-519 Corrections. (2023-2024)

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Date Published: 10/04/2023 09:00 PM

Senate Bill No. 519

CHAPTER 306

An act to amend Section 6024 of, and to add Sections 832.10 and 6034 to, the Penal Code, relating to corrections.

[Approved by Governor October 04, 2023. Filed with Secretary of State October 04, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 519, Atkins. Corrections.

Existing law, the California Public Records Act, generally requires public records to be open for inspection by the public. Existing law provides numerous exceptions to this requirement. Under existing law, the personnel records of peace officers and custodial officers are confidential and not subject to public inspection. Existing law provides certain exemptions to this confidentiality, including the reports, investigations, and findings of certain incidents involving the use of force by a peace officer.

This bill would, beginning on July 1, 2024, make records relating to an investigation conducted by a local detention facility into a death incident, as defined, available to public inspection, as specified. By increasing duties on local governments, this bill would create a state-mandated local program.

Existing law establishes the Board of State and Community Corrections, with the mission of providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system.

This bill would expand the board's mission to include the promotion of legal and safe conditions for youth, inmates, and staff in local detention facilities. The bill would create the position of Director of In-Custody Death Review (director) within the Board of State and Community Corrections. The bill would require the Governor to appoint, subject to confirmation by the Senate, the director to a 6-year term. The bill, beginning on July 1, 2024, would require the director to review investigations of any death incident occurring within a local detention facility, as specified. The bill would require, upon that review, the director to make specific recommendations to the sheriff or administrator of the local detention facility who operates the local detention facility regarding those incidents, including, among other things, changes to policies, procedures, and practices, as specified. The bill, within 90 days of receipt of the recommendations of the director, would require the sheriff or administrator of the local detention facility to identify the recommendations that will be implemented and provide a timeline for implementation and the anticipated cost of implementing those recommendations. The bill would require these recommendations and responses to be made available to the public, and would give the director and the sheriff or administrator of the local detention facility the discretion to redact these disclosures, as specified. The bill, beginning on July 1, 2024, would require the Board of State and Community Corrections to employ a sufficient number of licensed medical professionals and licensed behavioral health professionals to participate in the reviews, assist with establishing and implementing health and behavioral health standards for local detention facilities, and review the delivery of medical and behavioral health services within local detention facilities.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 832.10 is added to the Penal Code, to read:

832.10. (a) For purposes of this section, the following definitions shall apply:

- (1) "Death incident" means an event where a person has died in the custody or supervision of the local detention facility.
- (2) "Local detention facility" means any city, county, city and county, or regional jail, camp, court holding facility, private detention facility, or other facility in which persons are incarcerated.
- (3) "Private detention facility" has the same meaning as in Section 7320 of the Government Code.
- (4) "Person" includes, but is not limited to, a custodial officer or health care staff.
- (5) "Custodial officer" means those officers with the rank of deputy, correctional officer, patrol person, or another equivalent sworn or civilian rank whose duties include the supervision of incarcerated or detained persons at a local detention facility.
- (6) "Health care staff" means the health authority, individual, or agency that is designated with responsibility for providing health care in the local detention facility.

(b) Notwithstanding subdivision (a) of Section 832.7, or any other law, any record relating to an investigation conducted by the local detention facility involving a death incident maintained by a local detention facility shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(c) Records disclosed under subdivision (b) shall be subject to all of the following:

- (1) The record shall include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against a person, whether the person's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the death incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.
- (2) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:
 - (A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the people's names and work-related information.
 - (B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.
 - (C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct.
 - (D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of any person.

(3) Notwithstanding paragraph (2), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(4) A local detention facility may withhold a record of a death incident described in subdivision (b) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the death incident occurred or until the district attorney determines whether to file criminal charges related to the death incident, whichever occurs sooner. If a local detention facility delays disclosure pursuant to this clause, the local detention facility shall provide, in writing, the specific basis for the facility's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the death incident, the local detention facility may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against any person. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the death incident, whichever occurs sooner.

(iii) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, a local detention facility may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation. This clause does not prohibit a court from conducting in camera review to determine whether privilege exists.

(B) If criminal charges are filed related to the death incident, the local detention facility may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subdivision (b), the local detention facility may delay the disclosure of records or information until the facility determines whether the death incident violated a law or agency policy.

(5) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(6) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (4), records subject to disclosure under this section shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(7) (A) For purposes of releasing records pursuant to this subdivision, the attorney-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the local detention facility to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the local detention facility's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the local detention facility and its attorney.

(B) This paragraph does not prohibit the local detention facility from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law. However, to the extent that the local detention facility asserts attorney-client privilege or any other prohibitive disclosure provided by federal or state law, the court may conduct in camera review unless prohibited by law.

(d) This section does not affect the discovery or disclosure of information contained in a subject officer's personnel file pursuant to Section 1043 of the Evidence Code.

(e) This section does not affect the disclosure of other records provided under this chapter or any other law.

(f) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to Section 832.7, which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(g) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

(h) This section shall become operative on July 1, 2024.

SEC. 2. Section 6024 of the Penal Code is amended to read:

6024. (a) Commencing July 1, 2012, there is hereby established the Board of State and Community Corrections. The Board of State and Community Corrections shall be an entity independent of the Department of Corrections and Rehabilitation. The Governor may appoint an executive officer of the board, subject to Senate confirmation, who shall hold the office at the pleasure of the Governor. The executive officer shall be the administrative head of the board and shall exercise all duties and functions necessary to ensure that the responsibilities of the board are successfully discharged. As of July 1, 2012, any references to the Board of Corrections or the Corrections Standards Authority shall refer to the Board of State and Community Corrections. As of that date, the Corrections Standards Authority is abolished.

(b) The mission of the board shall include providing 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, and to promote legal and safe conditions for youth, inmates, and staff in local detention facilities. This mission shall 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.

(c) The board shall regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Toward this end, the board shall seek to ensure that its efforts (1) are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, (2) include the participation of those who must implement a board decision and are impacted by a board decision, and (3) promote collaboration and innovative problem solving consistent with the mission of the board. The board may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board.

(d) The board shall act as the supervisory board of the state planning agency pursuant to federal acts. It shall annually review and approve, or review, revise, and approve, the comprehensive state plan for the improvement of criminal justice and delinquency and gang prevention activities throughout the state, shall establish priorities for the use of funds as are available pursuant to federal acts, and shall approve the expenditure of all funds pursuant to such plans or federal acts, provided that the approval of those expenditures may be granted to single projects or to groups of projects.

(e) It is the intent of the Legislature that any statutory authority conferred on the Corrections Standards Authority or the previously abolished Board of Corrections shall apply to the Board of State and Community Corrections on and after July 1, 2012, unless expressly repealed by the act that added this section. The Board of State and Community Corrections is the successor to the Corrections Standards Authority, and as of July 1, 2012, is vested with all of the authority's rights, powers, authority, and duties, unless specifically repealed by this act.

(f) For purposes of this chapter, "federal acts" means Subchapter V of Chapter 46 of the federal Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351, 82 Stat. 197; 42 U.S.C. Sec. 3750 et seq.), the federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5601 et seq.), and any act or acts amendatory or supplemental thereto.

SEC. 3. Section 6034 is added to the Penal Code, to read:

6034. (a) There is hereby created the position of Director of In-Custody Death Review within the Board of State and Community Corrections. Subject to Senate confirmation, the Governor shall appoint the director to a six-year term.

(b) Commencing July 1, 2024, the director shall review investigations of any death incident, as defined in paragraph (1) of subdivision (a) of Section 832.10, occurring within a local detention facility, as defined in paragraph (2) of subdivision (a) of Section 832.10, and may, upon determination by the board that it is necessary and appropriate, conduct further review of a death incident. Upon that review, the director shall make specific and customized recommendations to the sheriff or administrator of the local detention facility who operates the local detention facility regarding those incidents, including changes to policies, procedures, and practices, facility upgrades, staffing considerations, the delivery of medical and behavioral health services within local detention facilities, and operational and capital funding requirements to address the director's recommendations.

(c) Within 90 days of receipt of the director's recommendations, the sheriff or administrator who operates the local detention facility shall identify the director's recommendations that will be implemented and shall provide a timeline for implementation and the anticipated cost of implementing those recommendations. The sheriff or administrator who operates the local detention facility shall also identify the director's recommendations that will not or cannot be implemented, accompanied by an explanation of why the recommendations will not or cannot be implemented. The Board of State and Community Corrections may call upon the sheriff or administrator who operates the local detention facility to respond to the Board of State and Community Corrections at a regularly scheduled meeting to discuss the recommendations and responses.

(d) The recommendations and responses shall be available to the public. The director and the sheriff or administrator of the local detention facility may, in their discretion, redact these disclosures or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder litigation related to the review, compromise the safety and security of staff, inmates, or members of the public, or where disclosure of the information is otherwise prohibited by law. Copies of public reports shall be posted on the Board of State and Community Corrections's internet website.

(e) Commencing July 1, 2024, and upon appropriation by the Legislature for this purpose, the Board of State and Community Corrections shall employ a sufficient number of licensed medical professionals and licensed behavioral health professionals to participate in the reviews described in this section, assist with establishing and implementing health and behavioral health standards for local detention facilities, and review the delivery of medical and behavioral health services within local detention facilities.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Section 6034 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This section balances the public's right to access information with the need to protect sensitive and confidential information, particularly during a potential ongoing investigation, and to maintain robust oversight over local detention facilities relating to in-custody deaths and the delivery of health care to individuals in custody.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.