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California State Senate

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BUDGET AND FISCAL REVIEW

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HEARING
Corrections and Public Safety
Wednesday, September 4, 2013
State Capitol, Room 4203
9 A.M.

Chair, Senator Mark Leno
Vice Chair, Senator Bill Emmerson

AGENDA **Introductory Remarks**

Legislative Analyst's Office

- *Brian Brown*, Managing Principal Analyst, Legislative Analyst's Office
- *Drew Soderborg*, Principal Fiscal and Policy Analyst, Legislative Analyst's Office

Department of Finance

- *Audrey Bazos*, Principal Program Analyst, Department of Finance

Department of Corrections and Rehabilitation

- *Martin Hoshino*, Undersecretary, Department of Corrections and Rehabilitation

Administrative Office of the Courts

- *Shelley Curran*, Senior Manager, Criminal Justice Court Services Office, Judicial Council of California - Administrative Office of the Courts

Public Comment

Closing Comment

BILL NO.

AUTHOR

SUBJECT

A.B. 84

Committee on Budget

Public Safety

SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW

Mark Leno, Chair

Bill No:	AB 84
Author:	Committee on Budget
As Amended:	September 3, 2013
Consultant:	Joe Stephenshaw
Fiscal:	Yes
Hearing Date:	September 4, 2013

Subject: Public Safety

Summary: This bill establishes an advisory California Commission on Public Safety, and enacts the Public Safety Performance Incentive Act of 2013.

Background: This bill broadly pertains to federal litigation concerning conditions in California's prisons that began in 1990 (*Coleman v. Brown* -- mental health) and expanded in 2001 (*Plata v. Brown* -- health care). In 2005, the *Plata* court established the Receivership and, in 2006, the plaintiffs in *Coleman* and *Plata* sought a three-judge federal court under the Prison Litigation Reform Act of 1996 capable of issuing a population reduction order. That panel was convened in July of 2007 and, in August of 2009, that panel issued an order directing the state to reduce the institutional prison population to 137.5 percent of design capacity within two years.

On May 23, 2011, The United States Supreme Court upheld this population limit, along with the two-year deadline imposed to achieve the reduction. Writing the Opinion of the Court, Justice Kennedy noted the state already had made "significant progress toward reducing its prison population If significant progress is made toward remedying the underlying constitutional violations, that progress may demonstrate that further population reductions are not necessary or are less urgent than previously believed. Were the State to make this showing, the three-judge court in the exercise of its discretion could consider whether it is appropriate to extend or modify this timeline."

Following the Supreme Court's decision, in June of 2011 the three-judge court issued an order setting a schedule for prison population reductions, meeting 137.5 percent of design capacity by June 27, 2013. In October of 2011, AB 109 (realignment) was enacted as a primary means for the state to achieve the population reduction. Numerous court filings followed throughout 2012, generally reflecting the parties' sparrings as to whether the state could in fact meet the deadline, whether the 137.5 percent cap should be modified, and whether the state already was in contempt of the court's order. These legal battles, too numerous to specify, generally amplified in 2013, including motions on the part of the state to vacate or modify the 137.5 percent of design capacity order, and a motion to terminate the *Coleman* case. At this time, the Governor declared that the crisis in the prisons was resolved, and terminated his emergency powers necessary to form out-of-state prison contracts to ease the in-state population levels. In January, the three-judge court granted the state a six-month extension to meet the population reduction order, which is the December 31, 2013 deadline now faced by the state. In April, the panel ordered the state to "immediately take all steps necessary" to comply with the reduction order. This summer, the Supreme Court denied the administration's motion to stay the December 31, 2013 deadline for reaching 137.5 percent of design capacity. The Administration's appeal seeking plenary review of the three-judge court's orders is now pending before the Supreme Court.

This bill would address California's correctional policies and practices, pertaining to the prison overcrowding litigation described above, as follows:

This bill would establish an advisory, permanent 18-member "Public Safety Commission" for the purposes of 1) providing information and recommendations to the legislature and the Governor in 2015 and thereafter to assist with prison population management options consistent with public safety, effective correctional practices, and the effective allocation of public safety resources; develop recommendations for the Legislature and the Governor to consider in 2015 and thereafter regarding criminal sentences and evidence-based programming for criminal offenders; and develop recommendations for the Legislature and the Governor to consider sentencing credits by no later than December 1, 2015.

The commission would be staffed independently by staff physically sited in the Administrative Office of the Courts.

This bill would enact the "Public Safety Performance Incentive Act of 2013," with the following key features:

- The Act would be supported with seed funding to all counties, as specified, based upon per capita 18-25 population, to support evidence-based programs and practices likely to reduce the number of offenders admitted to state prison, as specified.
- The Act would be supported with seed funding to superior courts to support the administration and operation of court programs and practices known to reduce offender recidivism, as specified.
- The Act would establish an incentive-based funding formula by which counties that succeed in reducing crime among felony offender populations -- measured by reductions in new admission to state prison -- receive state grant funding to support local criminal justice programs and practices.
- The Act would use new prison admissions from 2012 and the first eight months of 2013 to establish a statewide baseline against which to measure future reductions.
- The Act would require the Administrative Office of the Courts, in consultation with specified stakeholders, to specify and define minimum outcome-based measures, as specified, and to provide annual reports on the implementation of the Act.

Fiscal Effect:

This bill appropriates \$1 million from the General Fund for the purposes of supporting the Public Safety Commission for the remainder of the current fiscal year.

This bill appropriates \$180 million from the General Fund for the purposes of supporting the Public Safety Performance Incentive Act of 2013 with respect to county criminal justice practices and programs, as specified, for the remainder of the current fiscal year.

This bill appropriates \$20 million from the General Fund for the purposes of supporting the Public Safety Performance Incentive Act of 2013 with respect to superior court programs and practices known to reduce offender recidivism, as specified, for the remainder of the current fiscal year.

This bill contemplates not more than \$315 million in future annual funding to support local evidence-based criminal justice practices and programming.

This bill appropriates \$500,000 from the General Fund to the Administrative Office of the Courts for the purpose of supporting the Public Safety Performance Incentive Act of 2013 for the remainder of the current fiscal year.

Support: Unknown

Opposed: Unknown

Comments:

Federal Litigation: This bill appears designed to address the federal court's directive that California achieve a durable remedy to prison overcrowding. In addition, the bill appears to be predicated on the federal court modifying the December 31, 2013 deadline as a revision appropriate to its equitable decree based on the state's fiscal commitments reflected in the bill and the time necessary to implement the bill's provisions.

SB 678 Model: The Public Safety Performance Incentive Act contained in this bill is modeled after SB 678 (Leno - 2009), which incentivized improved, evidence-based practices for felony probation supervision to reduce the number of felony probationers being failed into prison. In 2011, the second calendar year of SB 678 implementation, California probation departments successfully diverted an average daily population of over 9,500 offenders from going to state prison. This action resulted in a 2011 state savings of approximately \$284 million (with total savings of \$536 million over the first three years). Half of those savings were shared with counties to continue their successful supervision practices.

Public Safety Commission: This bill would create a permanent, *advisory* commission to examine prison population management practices and sentencing policies for the purpose of developing information and recommendations to the Legislature and the Governor. The commission would be comprised of 18 members, reflecting law enforcement, the bench, the defense bar, specified experts, and others. The Governor would appoint the chair and executive director.