

MARCH 2, 2022

A Review of State Standards and Inspections for Local Detention Facilities

PRESENTED TO:

Senate Budget and Fiscal Review Subcommittee No. 5
On Public Safety, Judiciary, Labor and Transportation
Hon. María Elena Durazo, Chair



LEGISLATIVE ANALYST'S OFFICE

Overview of Board of State and Community Corrections (BSCC)

- **Main Responsibilities.** BSCC has four main responsibilities: (1) setting standards for and inspecting local detention facilities (such as county jails and juvenile halls), (2) setting standards for selection and training of local correctional staff, (3) administering various state and federal grant programs related to recidivism reduction and prevention strategies, and (4) administering the state’s construction financing program for local detention facilities.
- **Governance.** The agency is overseen by a 13-member board. In addition to a chair, statute requires the board to include two administrators from the California Department of Corrections and Rehabilitation, five local law enforcement officials, one county supervisor or administrative officer, a judge, two providers of rehabilitative services, and a member of the public. Ten members—including the chair—are appointed by the Governor and subject to Senate confirmation.
- **Executive Steering Committees (ESCs) and Working Groups.** Statute requires the board to regularly seek advice from a balanced range of stakeholders and subject matter experts. To fulfill this requirement, BSCC uses:
 - **ESCs** that are appointed by the board to carry out specified tasks, such as overseeing the review of local detention facility standards and recommending changes. The board either approves, rejects, or revises those recommendations.
 - **Working groups** that are appointed by ESCs to carry out subtasks and make recommendations. For example, the ESC tasked with reviewing local detention facility standards convenes multiple working groups, each focused on a particular subject area (such as nutritional health).



Local Detention Facility Standards and Inspections Program

BSCC Performs Certain Activities

- ***Maintenance of Minimum Standards for Facility Construction and Operation.*** BSCC is required to create such local detention facility standards, as well as review and consider revisions to them once every two years. This work is done primarily by ESCs and working groups.
- ***Inspections of Each Facility to Assess Compliance With Standards.*** Inspectors review policy manuals and documentation of operations (such as log books); tour the facilities; and interview staff, inmates, and detained youth. BSCC staff work with facility staff to develop a corrective action plan if areas of noncompliance are identified.
- ***Reporting on Compliance With Standards.*** Statute requires BSCC to provide inspection reports to facility administrators and certain other local officials, such as the presiding judge in the county. BSCC must post all inspection reports on its website and submit a summary report to the Legislature every other year.
- ***Does Not Include Enforcement.*** While statute requires BSCC to report which adult detention facilities are not in compliance with the standards, it does not give BSCC a mechanism to enforce the standards (such as by fining facilities).



Local Detention Facility Standards and Inspections Program

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BSCC Recently Modified Program

- High profile cases of inmate mistreatment have raised concerns about conditions inside California jails. Following these concerns, and citing an overall insufficient level of accountability and oversight of jails, the Governor directed BSCC in January 2020 to modify the standards and inspections program to:
 - ***Ensure Standards Are Consistent With National Best Practice.*** As part of its existing biennial standards revision process, BSCC staff have started providing the working group members with reading materials on possible best practices for operating detention facilities.
 - ***Prioritize Inspections and Technical Assistance for Facilities With History of Noncompliance.*** In response to this directive, BSCC requested and received \$2.9 million and 14 positions in 2021-22 and ongoing to inspect each facility at least annually, rather than once every two years as was generally done previously. These resources also allow BSCC to conduct additional inspections or technical assistance for facilities struggling to comply with the standards.
 - ***Highlight Noncompliance Through Public Board Meetings.*** BSCC now asks agencies that do not address areas of noncompliance within specified time periods to appear before the board at a public meeting to discuss why they are not compliant. However, attendance is optional.



Standards and Inspections Program Lacks Clear Mission and Goals

- ***Program Mission and Goals Not Specified in Statute.*** In our report, [*A Review of State Standards and Inspections for Local Detention Facilities*](#), we find that the lack of a clear statutory mission and goals makes it unclear whether the intended mission of the program is to assist local government in determining legal requirements for facility conditions, create statewide uniformity in facility operations, ensure humane and safe conditions, or something else.
- ***Leaves Significant Discretion to Administration to Define Mission and Goals.*** The absence of a defined program mission and goals in statute leaves significant discretion to BSCC and the administration in determining how to operate the program. While there is some consensus that the current informal mission of the program is generally to promote legal, humane, and safe conditions, nothing prevents the current administration from operating the program based on a different mission. Furthermore, the lack of clearly defined goals leaves significant discretion to BSCC and the administration in how to further whatever informal mission is adopted.
- ***Undermines Legislative Oversight.*** Without clear program mission and goals, it is difficult for the Legislature to assess whether the program (1) fulfills an important state function that is consistent with its priorities, (2) is appropriately structured and resourced or should even continue to exist, or (3) is operating effectively and achieving its goals.



Recommendations to Ensure Success of Standards and Inspections for Local Detention Facilities

Establish Clear Program Mission and Goals

- ***Program Mission: Promote Legal, Humane, and Safe Conditions.*** Based on our discussions with various stakeholders and review of best practices, we recommend that the Legislature establish this mission in statute. To further this mission, we recommend establishing the following goals in statute.
- ***Program Goal: Maintain Standards That Help Local Leaders Determine and Meet Legal Requirements.*** Much of what defines legally acceptable conditions of detention is based on past court decisions known as case law. The state can help facility administrators monitor and translate case law into practice. Moreover, it is likely more efficient for the state to translate case law into standards than for each facility to do so separately. By inspecting facilities relative to these standards, the state can help facility administrators meet legal requirements.
- ***Program Goal: Facilitate Transparency and Accountability Through Standards and Inspections.*** There are special challenges to ensuring transparency and accountability in detention facilities, such as the fact that they are removed from public view. The state can provide local leaders and other stakeholders with an independent assessment of how facilities compare to legal standards and generally accepted practices. This can help ensure needed changes are implemented.
- ***Program Goal: Promote Equitable Provision of Legal, Humane, and Safe Conditions.*** If standards are not crafted with acknowledgment that different groups have different needs, they could inadvertently create inequitable outcomes. This is particularly important given that local detention facilities tend to have relatively large populations of vulnerable groups.



Recommendations to Ensure Success of Standards and Inspections for Local Detention Facilities

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- **Program Goal: Provide Technical Assistance and Statewide Leadership to Facilitate Systemic Improvement.** State level standards and inspections agencies are well positioned to support local communities in meeting standards, including addressing root causes of noncompliance. For example, inspectors can facilitate knowledge sharing between facilities and identify systemic challenges faced statewide.

Balance Board Membership to Facilitate Oversight

- **Add Board Members With Expertise in Oversight.** As of January 2022, 7 of the 13 BSCC board members were administrators of law enforcement agencies, 4 of which operated facilities inspected by the program. In addition, the board does not include designated slots for members with experience providing external oversight of such facilities, such as someone with experience in litigating local detention conditions. Accordingly, we recommend adopting legislation to add board members with professional expertise in advocacy for and oversight of detention conditions.
- **Increase Number of Members Appointed by Legislature.** Currently, 10 out of 13 BSCC board members are appointed by the Governor. In order to create a better balance and enhance legislative oversight, we recommend that more board members be subject to appointment by the Legislature.



Recommendations to Ensure Success of Standards and Inspections for Local Detention Facilities

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Require Plan to Align Program With Mission and Goals

- We recommend directing BSCC to develop a detailed plan for how to align the program with our recommended mission and goals. This will (1) enable the Legislature to determine whether any statutory changes are needed and/or whether to provide BSCC with additional resources to implement the plan and (2) facilitate future evaluation of program effectiveness. To guide development of the plan, we recommend requiring that the plan describe how BSCC will achieve the following outcomes.
- **Standards Reflecting Minimum Legal, Humane, and Safe Conditions.** The plan should outline how the standards will be revised to (1) be more specific such that they effectively communicate what legal, humane, and safe conditions are and (2) ensure that standards equitably address the specialized needs of all inmates and detained youth.
- **High-Quality, Risk-Based Inspection Strategy to Ensure Pressing Issues Are Found Quickly.** The plan should include consideration of key information (such as reported standards violations) that BSCC could use to more strategically target inspections.
- **Specific Benchmarks to Ensure Inspections Effectively Provide Transparency.** The plan should indicate how BSCC will develop clear, transparent benchmarks for inspections; guidance for interpreting subjectivity in the standards; and a quality assurance process to ensure inspectors meet these benchmarks.
- **Quality Reporting to Support Transparency and Accountability.** The plan should outline how BSCC will improve the quality of its reporting on the results of inspections, such as by ensuring reports clearly describe violations and issuing special reports to highlight serious violations.
- **Technical Assistance and Statewide Leadership.** The plan should give consideration to (1) providing longer term, more complex technical assistance to facilities and (2) how BSCC can help highlight and promote promising practices to facilitate continuous, systemic improvement in detention facilities.



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