

# A Review of State Standards and Inspections for Local Detention Facilities





# Executive Summary

## Local Detention Facility Standards and Inspections Program

Local governments are responsible for operating local detention facilities, including jails, which incarcerate people at various stages of the criminal justice process. In total, there are about 550 local detention facilities in California. Statute requires the Board of State and Community Corrections (BSCC) to (1) maintain minimum standards for the construction and operation of these facilities, (2) inspect each facility every two years for compliance with the standards, and (3) issue certain public reports on the inspection results.

## Lack of Clear Mission and Goals for Program Undermines Legislative Oversight

In our review of the local detention facility standards and inspection program, we find it difficult to assess the program's effectiveness primarily because state law does not specify the mission or goals BSCC should pursue as it implements the program. This leaves significant discretion to BSCC and the administration in determining how to operate the program and undermines the Legislature's ability to assess whether the program is operating effectively and is consistent with Legislative priorities.

## Recommendations to Ensure Success of Standards and Inspections Program

In order to address the above concern, we recommend the Legislature take the following steps to ensure the program's success.

**Establish Clear Program Mission and Goals.** We recommend that the Legislature establish in statute that the mission of the program is to promote legal, humane, and safe conditions for youth, inmates, and staff in local detention facilities. To further this mission, we recommend establishing four goals for the program: (1) maintain standards that help local leaders determine and meet legal requirements; (2) facilitate transparency and accountability through standards and inspections; (3) promote equitable provision of legal, humane, and safe conditions; and (4) provide technical assistance and statewide leadership to facilitate systemic improvement in detention conditions.

**Balance Board Membership to Facilitate Oversight.** We find that the current BSCC membership does not have sufficient expertise and balance of perspectives to oversee local detention facilities based on the above mission and goals. Accordingly, we recommend that the Legislature adopt legislation to add board members with professional expertise in advocacy for and oversight of detention conditions.

**Require Plan to Align Program With Mission and Goals.** We recommend that the Legislature direct BSCC to develop a detailed plan for how to align the program with our proposed mission and goals. To guide development of the plan, we recommend that the Legislature require that the plan include the following elements:

- **Standards Reflecting Minimum Legal, Safe, and Humane Conditions.** The plan should outline how the standards will be revised to (1) be more specific such that they effectively communicate what legal, safe, and humane 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.

## INTRODUCTION

Local governments are responsible for operating certain detention facilities (such as jails) to incarcerate people in various stages of the criminal justice system. Detention facilities often engage in high stakes activities—including delivery of health care and use of force—that can have life and death consequences for those incarcerated as well as staff. Accordingly, proper facility policies and operations are critical to ensuring safety and humane treatment, protecting the rights of those incarcerated, and minimizing exposure to legal liability.

Several states—including California—set minimum standards for the operation of local

detention facilities and inspect facilities relative to those standards. Such programs can provide state assistance for and oversight of local detention facilities. The operation of local detention facilities is currently of particular interest to members of the Legislature in light of recent concerns raised around conditions of jails in California.

In this report, we (1) provide an overview of local detention facilities in California, (2) assess the state’s program for setting minimum facility standards and inspecting these facilities, and (3) recommend steps to help ensure the success of the program going forward.

## BACKGROUND

### OVERVIEW OF LOCAL DETENTION FACILITIES

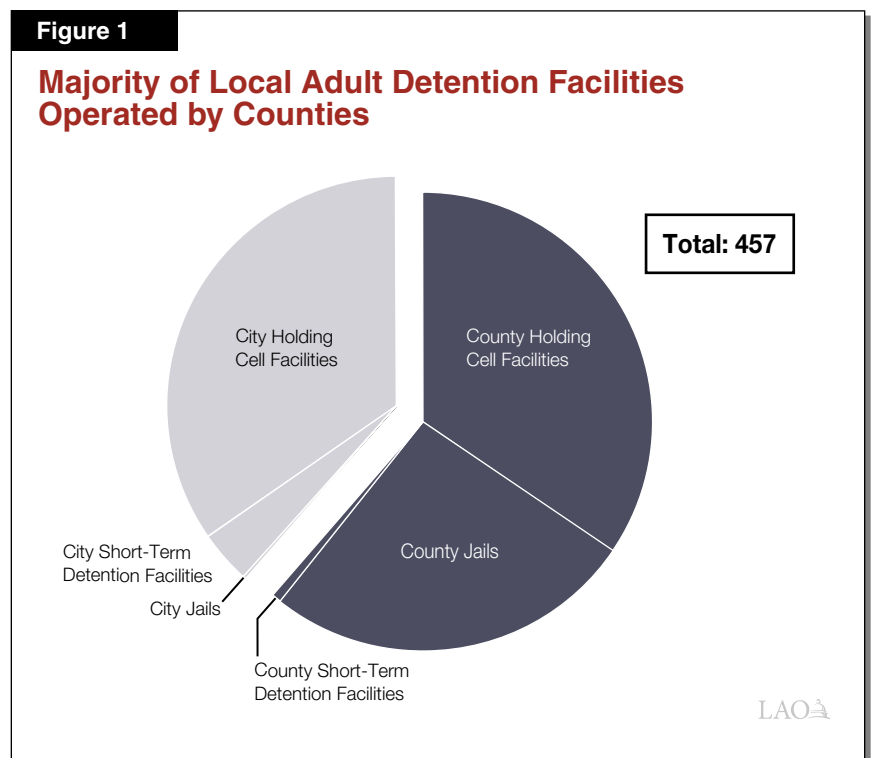
In California, counties are responsible for detaining, in secure facilities, both youth and adults who (1) have been arrested for a crime and are awaiting trial or court decisions or (2) are serving time for committing a crime. In addition, some city police departments operate detention facilities used to detain arrestees on a short-term basis. In total, there are about 550 local detention facilities in the state.

#### Adult Detention Facilities

##### *House Adults in Various Stages of the Criminal Justice System.*

As shown in **Figure 1**, there are 457 local detention facilities that house people in various stages of the adult criminal justice system. Of these, 281 are operated by counties and 176 are operated by cities. These facilities include:

- **Jails.** These facilities can house people for significant periods of time including while they are serving multiyear sentences, though also may hold people for short periods following arrest. Statewide, jails have a capacity of 80,000 and had an average daily population of



73,500 in 2019. Of this population, 67 percent were unsentenced, 82 percent were charged with or convicted of a felony, and 87 percent were male.

- **Short-Term Detention Facilities.** These facilities hold people for less than 96 hours, such as some police facilities that hold people following arrest. Statewide, short-term detention facilities have a capacity of 4,000. The state does not collect population data for these facilities.
- **Holding Cells.** These facilities hold people for less than 24 hours, such as courthouse cells that hold people for their hearings. The state does not collect capacity or population data for these facilities.

While counties operate all of the different types of facilities, cities generally operate holding cells and short-term detention facilities, though one city—Santa Ana—operates a jail.

**Typically Operated by County Sheriffs or Police Chiefs.** County detention facilities are generally operated by elected sheriffs while city detention facilities are operated by chiefs of police who are appointed by elected city officials. Sheriffs and police chiefs typically maintain internal policy and procedure manuals that instruct staff in matters of facility operations. For example, a jail's policy regarding external visitors may outline when staff can deny or terminate a visit, such as if the visitor is under the influence of drugs or alcohol. Ultimately, sheriffs—who have broad and direct authority over facility operations—and county boards of supervisors—who allocate funding to sheriffs—are responsible for conditions inside county-operated detention facilities. Chiefs of police, as well as the city officials who appoint and oversee them, are responsible for conditions inside city-operated detention facilities.

## Juvenile Detention Facilities

**House Youth in Various Stages of Juvenile Justice System.** California's juvenile justice system, which is oriented around the treatment and rehabilitation of juvenile offenders as opposed to punishment, has a broad array of methods and programs for addressing juvenile crime. Depending

on the severity of the offense and the background of the offender, youth may be placed in detention facilities while their cases are being heard in court and/or to receive rehabilitative treatment. Currently, there are 90 local detention facilities in California that house youth. As we discuss below, all of these facilities are operated by counties. There are generally two types of juvenile detention facilities:

- **Juvenile Halls.** Juvenile halls hold youth who have been arrested and/or are having their cases heard in juvenile courts and are not allowed to remain at home. They also hold youth placed there to receive rehabilitation programming and youth serving short stints of incarceration for violating the rules they must follow while under supervision in the community. There are 50 juvenile halls in California, which together have a capacity of about 7,200 beds. In 2019, the average daily juvenile hall population was about 2,500. Of this population, about 65 percent were being held before a judge had decided their case.
- **Juvenile Camps and Ranches.** Juvenile camps and ranches are responsible for holding youth placed there to receive rehabilitation programming offered at the facilities after a judge has decided their case. There are 40 juvenile camps and ranches in California, which together have a capacity of about 4,000 beds. In 2019, the average daily camp and ranch population was about 1,200.

**Operated by County Chief Probation Officers.** County juvenile justice systems—including juvenile facilities—are operated by county probation departments headed by chief probation officers. Chief probation officers are either appointed by the state trial court located in the county or by the county board of supervisors. The board of supervisors determines what level of funding to allocate to the probation department. Probation departments typically maintain internal policy and procedure manuals, which instruct staff in matters of facility operations. Ultimately, the chief probation officer, county board of supervisors, and court are responsible for conditions inside juvenile facilities.

## State Support for Local Detention Facilities

**State Funding for Operation and Construction Costs.** While counties and cities are primarily responsible for funding local detention facilities, the state provides some funding to support these facilities. For example, in 2011, the state enacted legislation to realign to counties the responsibility for incarcerating and supervising certain felony offenders. To pay for this realigned workload, the state provides counties with a portion of annual state sales tax revenue, which has totaled around \$1 billion in recent years. Counties use a significant share of these funds to support jails. In addition, the state has sometimes provided one-time funding to support the construction of local detention facilities. Since 2007, the state has authorized lease revenue bonds of about \$2.5 billion to fund the construction and modernization of jails and \$300 million for juvenile facilities.

**Other State Assistance for Local Detention Facilities.** In addition to providing certain funding for local detention facilities, the state establishes minimum standards for the selection and training of local correctional staff at the facilities, monitors compliance with the standards, develops core training curricula for entry-level staff, and certifies other training courses. In addition, the state establishes minimum standards for the building and operation of local detention facilities, which we discuss in greater detail below.

## BSCC RESPONSIBLE FOR ESTABLISHING STATE STANDARDS AND INSPECTING LOCAL DETENTION FACILITIES

### Overview of Board of State and Community Corrections

The Board of State and Community Corrections (BSCC) was established in 2012, though similar agencies have existed in various forms since the 1940s. Under existing state law, BSCC is responsible for providing statewide leadership, coordination, and technical assistance to promote

effective state and local efforts and partnerships in California's adult and juvenile justice systems.

**Main Responsibilities.** BSCC has four main responsibilities: (1) setting standards for and inspecting local detention facilities, (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. The 2020-21 budget provides BSCC with \$348 million (\$136 million General Fund) to carry out these responsibilities. Of this amount, \$315 million is expected to be passed through to local governments and other entities. Of the \$33 million retained by BSCC, \$2.7 million—as well as 8.4 staff positions—supports the standards and inspections program. (We note that this is roughly the same level of resources proposed for the program in the Governor's budget for 2021-22.)

**Governance.** As shown in **Figure 2** on the next page, 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 (CDCR), 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. The Judicial Council, Speaker of the Assembly, and the Senate Committee on Rules each appoint one member. Statute requires the board to select either a sheriff or a chief probation officer from among its members to serve as vice chair. The chair of the board is a full-time paid position while the remaining members receive reimbursement for any expenses incurred as a board member, such as travel costs. The agency is managed by an executive director who is appointed by the Governor and subject to Senate confirmation.

**Executive Steering Committees and Working Groups.** Statute requires the board to regularly seek advice from a balanced range of stakeholders and subject matter experts. This is to ensure that the board's efforts (1) are well-informed by experts,

**Figure 2**

**BSCC Board Includes State and Local Officials and Service Providers**

**Appointed by Governor and Confirmed by Senate**

- Chair.
- Secretary of CDCR.
- Director of DAPO for CDCR.
- Sheriff in charge of a small detention facility.<sup>a</sup>
- Sheriff in charge of a large detention facility.<sup>a</sup>
- Chief probation officer from a small county.<sup>b</sup>
- Chief probation officer from a large county.<sup>b</sup>
- County supervisor or county administrative officer.
- Chief of police.
- Member of the public.

**Appointed by Others**

- Judge appointed by Judicial Council of California.
- Community provider of rehabilitative treatment or services for adult offenders appointed by the Speaker of the Assembly.
- Advocate or community provider of rehabilitative treatment or services for juvenile offenders appointed by the Senate Rules Committee.

<sup>a</sup> Small defined as a capacity of 200 or fewer inmates. Large defined as capacity over 200 inmates.

<sup>b</sup> Small defined as population of 200,000 or fewer. Large defined as population over 200,000.

BSCC = Board of State and Community Corrections; CDCR = California Department of Corrections and Rehabilitation; and DAPO = Division of Adult Parole Operations.

**Local Detention Facility Standards and Inspections Program**

*BSCC Required to Perform Certain Activities Related to Facility Standards.* The state first created minimum standards for local jails in the 1940s after a statewide survey of jails found them in need of improvement. The standards were first administered by the State Board of Corrections, which later evolved through various government reorganizations into BSCC. The standards have been revised over time—including with the addition of standards for juvenile detention facilities—and are currently codified in Titles 15 and 24 of the California Code of Regulations. Current state law requires BSCC to perform the following specific activities, which make up the core of the standards and inspections program:

- **Maintain Minimum Standards for Facility Construction and Operation.** BSCC is required to create minimum standards for construction and operation of local detention facilities, as well as review and consider revisions to the standards once every two years. This work is done primarily by ESCs and working groups generally consisting of detention facility managers and advocates for inmates and detained youth, as well as formerly incarcerated people. In selecting members for these groups, statute requires that BSCC staff seek to include individuals with expertise and diverse perspectives.
- **Inspect Each Facility Every Two Years.** BSCC is required to inspect each local detention facility once every two years to assess compliance with the above standards. Inspectors review policy manuals and other written documentation of facility processes and procedures to assess their compliance with the standards. In addition, inspectors assess whether operations match policy by touring

(2) include the participation of those affected by board decisions, and (3) promote collaboration and innovative problem solving. In order to fulfill this requirement, BSCC uses:

- **Executive steering committees (ESCs)** that are appointed by the board to carry out specified tasks and provide findings and recommendations as needed. For example, BSCC routinely appoints an ESC to oversee the review of local detention facility standards and recommend 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). These working groups review the standards relevant to their subject area and recommend revisions to the ESC.



the facility; interviewing staff, inmates, and detained youth; and reviewing documentation of operations (such as log books and grievance forms). Following the inspection, BSCC staff continue to work with facility staff to develop and implement a corrective action plan if areas of noncompliance are identified.

- **Report on Facilities' 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 is required to post all inspection reports on its website and submit a summary report to the Legislature every other year. This summary report must include a list of noncompliant facilities, the specific standards these facilities did not meet, and the estimated cost to each facility of achieving compliance. We note, however, that BSCC does not report estimated costs for compliance. According to BSCC, such information is not collected and would be speculative.

**BSCC Not Authorized to Enforce Standards.**

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). If BSCC finds juvenile detention facilities out of compliance, it is required by state law to promptly notify the facility operator and those who have authority to place minors in the facility. If the reason for noncompliance is not addressed within 60 days of the notification, state law prohibits minors from being housed in the facility until the issue is remedied. However, as with the standards for adult facilities, state law does not authorize BSCC to enforce this prohibition.

**BSCC Modifying Program.** In recent years, high profile cases of inmate mistreatment covered in the

media have raised concerns about conditions inside California jails. Many of these cases point toward systemic problems, not just isolated incidents. Following these concerns, and citing an overall insufficient level of accountability and oversight of jails across the state, the Governor directed BSCC in January 2020 to make the following changes to the standards and inspections program:

- **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. Staff also ask members to confirm they are considering best practices in their revision process.
- **Prioritize Inspections and Technical Assistance for Facilities With History of Noncompliance.** BSCC has begun conducting additional inspections and providing technical assistance at facilities that were found in the previous inspection cycle to have more than two significant items of noncompliance. These additional inspections are focused on the facilities' specific areas of noncompliance and do not replace their standard biennial comprehensive inspection.
- **Highlight Noncompliance Through Public Board Meetings.** BSCC plans to implement a new process to highlight cases of detention facilities failing to comply with standards. Specifically, BSCC will ask 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 and if an agency declines to attend, there are no further consequences associated with noncompliance.

## STANDARDS AND INSPECTIONS PROGRAM LACKS CLEAR MISSION AND GOALS

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The BSCC standards and inspections program provides an opportunity for state assistance for and oversight of local detention facilities. As such, it is important to ensure that the program operates effectively, particularly in light of recent concerns shared by the Governor and members of the Legislature regarding conditions inside local detention facilities. Based on our review of the current standards and inspections program, however, we find it difficult to assess the program's effectiveness. As we discuss below, this is primarily because the program lacks a clearly defined mission and goals from which to measure specific program outcomes.

***Program Mission and Goals Not Specified in Statute.*** As discussed above, existing state law requires BSCC to maintain standards for local detention facilities, inspect these facilities, and issue reports on their compliance with the standards. However, state law does not specify the mission or goals BSCC should pursue as it carries out these activities. As such, it is 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. Based on conversations with BSCC staff and other stakeholders, there appears to be some consensus that the current informal mission of the program is generally to promote

legal, humane, and safe conditions for inmates, detained youth, and staff. However, since this specific mission is not specified in statute, nothing prevents the current administration from operating the program based on a different mission.

Furthermore, the lack of clearly defined goals in statute leaves significant discretion to BSCC and the administration in how to further whatever informal mission it chooses to adopt. For example, the following two goals would both generally support the mission of promoting legal, humane, and safe detention conditions: (1) supporting facility administrators in complying with evolving court decisions on detention conditions and (2) providing external oversight of local detention facilities. An agency with the first objective may develop reports written for facility administrators to help them modify their operations to avoid lawsuits. Such reports would not need to be easily understood by the public. In contrast, an agency with the second objective would likely release reports detailing violations in layperson's terms to allow stakeholders to hold facility administrators accountable.

***Undermines Legislative Oversight.*** Without clear program mission and goals, it is difficult for the Legislature to assess whether the program fulfills an important state function that is consistent with its priorities. This includes whether the program is appropriately structured and resourced or should even continue to exist. Moreover, to the extent the program does continue to exist, the lack of clear goals makes it difficult for the Legislature, as well as the general public, to assess whether the program is operating effectively and achieving its goals.

# RECOMMENDATIONS TO ENSURE SUCCESS OF STANDARDS AND INSPECTIONS FOR LOCAL DETENTION FACILITIES

In view of the above concerns, we recommend that the Legislature adopt legislation to establish a clear mission and goals for the standards and inspection program for local detention facilities. In particular, we recommend that the program's mission be to promote legal, humane, and safe conditions for the youth and inmates in local detention facilities—who tend to be among society's most vulnerable groups—as well as the staff who work at the facilities. Based on our proposed mission and goals, we also recommend that the Legislature restructure the membership of BSCC to help ensure that they are achieved. Lastly, we recommend requiring BSCC to develop a plan for aligning the current standards and inspection program to our proposed mission and goals.

Overall, we find that our package of recommendations will help ensure the success of the local detention facility standards and inspection program going forward. Moreover, they will help address recent concerns about conditions inside local detention facilities by increasing transparency and better supporting local efforts to improve facility conditions. **Figure 3** summarizes our recommendations, which we discuss in more detail below.

## ESTABLISH CLEAR PROGRAM MISSION AND GOALS

**Program Mission: Promote Legal, Humane, and Safe Conditions.** Based on our discussions with various stakeholders (such as representatives of sheriffs and chief probation officers, as well as advocacy groups that focus on the welfare of inmates and detained youth) and review of best practices, we recommend that the Legislature establish

in statute that the mission of the standards and inspection program is to promote legal, humane, and safe conditions for youth, inmates, and staff in local detention facilities. This mission is generally consistent with what appears to be the current informal mission of the program. In addition, we recommend the Legislature adopt in statute the specific programmatic goals to further this mission, which we discuss below. Later in this report, we discuss the extent to which the current program is aligned to these goals and make recommendations for how BSCC membership and the standards and inspection program could be restructured to better align with them.

**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 decades of past court decisions. In the process of deciding these previous cases, courts resolved ambiguities in the law—setting a precedent for how later courts analyze similar issues. This is often referred to as “case law.” For example, in 1993, the United States Supreme Court held, in a case known as *Helling v. McKinney*, that allowing inmates to be exposed to second-hand smoke could constitute a violation of the United States Constitution's prohibition on cruel and unusual punishment. This ruling established a principle that inmates may challenge detention conditions without sustaining an injury if they can show that the condition puts

**Figure 3**

### Recommendations to Ensure Success of BSCC Standards and Inspections Program

- ✓ **Establish Clear Program Mission and Goals**
- ✓ **Balance Board Membership to Facilitate Oversight**
- ✓ **Require Plan to Align Program With Mission and Goals**

BSCC = Board of State and Community Corrections.

them at serious risk of future injury. This principle has implications for the legality of other aspects of detention facilities, such as a facility's ability to control the spread of infectious diseases.

Not only does case law continue to evolve as new court decisions are made, but it can be difficult to translate it into practice. For example, due to the principle established in *Helling v. McKinney*, detention facilities must prevent infectious diseases from putting inmates at risk of serious future injury. However, determining the key elements for a policy to control the spread of infectious diseases may require medical and public health knowledge that facility administrators do not necessarily have.

Accordingly, it is important for facility administrators to continually monitor and translate case law specific to local detention facilities into practice. However, because of the inherent difficulties involved, state agencies can assist facility administrators with this work. For example, BSCC's current standards specify that facilities must screen inmates and detained youth upon arrival for symptoms of infectious diseases. Moreover, it is likely more efficient for a single entity—the state—to translate case law into standards than for each facility to do so separately. Furthermore, by inspecting facilities relative to these standards, the state can provide an independent assessment to help facility administrators ensure their facility is operating consistently with what the law requires. Such a program can benefit inmates and detained youth by promoting legal detention conditions, as well as help local government reduce their exposure to lawsuits. Accordingly, we recommend that an explicit goal of BSCC's standards and inspection program be to maintain standards that help local governments to effectively determine and meet legal requirements.

***Program Goal: Facilitate Transparency and Accountability Through Standards and Inspections.*** Local detention facilities engage in high-stakes activities—including delivery of health care and use of force—that can have life and death consequences for inmates, detained youth, and staff. Accordingly, facilities require heightened oversight that is tailored to the correctional setting. However, there are special challenges to ensuring transparency and accountability in detention

facilities, which make external oversight of these facilities particularly important. For example, since detention facilities are removed from public view, natural transparency around the conditions inside them is limited. In addition, the public may not choose to actively scrutinize detention facilities because such facilities affect a relatively small portion of the population and one that is often considered “unsympathetic” due to being accused or convicted of crimes.

There are various entities engaged in external oversight of local detention facilities, as described in the box on the next page. Well-structured state standards and inspections programs are well-positioned to contribute to this overall system of oversight. As discussed above, standards programs can help facilities meet legal requirements. However, standards can also encourage generally accepted practices that promote humane conditions and staff safety. For example, case law requires facilities to serve food that is nutritious and prepared under clean conditions. However, stakeholders may feel requiring one hot meal per day is appropriate because it promotes humane conditions and inmate morale, which in turn, improves staff safety. By maintaining standards and inspections for all local detention facilities, the state can provide local leaders—such as sheriffs, boards of supervisors, or juvenile court judges—with an independent assessment of how facilities compare to generally accepted practices. They can then use this information to make changes as needed. Furthermore, other stakeholders—such as facility staff or community groups—may choose to use this information to hold facilities and/or local leaders accountable for making such changes. Accordingly, we recommend that an explicit goal of the BSCC standards and inspections program be to facilitate transparency and accountability through standards and inspections.

***Program Goal: Promote Equitable Provision of Legal, Humane, and Safe Conditions.*** Standards are generally designed to apply the same requirement across all people or facilities. However, in some cases, applying the same requirement could disadvantage certain groups relative to others. For example, a standard that

## External Oversight of Local Detention Facilities in California

Local detention facilities typically have multiple entities overseeing them, including entities from different levels and branches of government as well as nongovernmental entities. These entities often have different stakeholders and levels of authority over facilities. In addition, they often employ different methods of oversight and assess facilities relative to different benchmarks. In California, various entities (in addition to the Board of State and Community Corrections) provide oversight of local detention facilities. These include:

- **State and Federal Courts.** Courts assess whether violations of law have occurred. At least 11 California counties have recently been subject to class wide court injunctions or consent decrees on jail conditions or are in the process of negotiating them. For example, inmates at the Santa Barbara County Jail sued Santa Barbara County and the Sheriff's Office in 2017 claiming that the jail violated state and federal law by (1) failing to provide basic health care; (2) overusing solitary confinement; (3) discriminating against people with disabilities; and (4) providing inhumane, unsanitary, and unsafe living conditions. In 2020, the parties reached a settlement agreement under which the county will make several significant changes to jail policies and practices, such as implementing an electronic health records system.
- **United States Department of Justice (U.S. DOJ).** Federal law allows the U.S. DOJ to conduct investigations of alleged civil rights violations at correctional facilities, which may lead to an agreed-upon set of standards that the agency must follow, along with long-term compliance monitoring. For example, after several inmate deaths—including a death following extended use of a restraint chair—the U.S. DOJ initiated an ongoing investigation into the San Luis Obispo County Jail's provision of medical and mental health care to inmates. The U.S. DOJ also oversees standards and inspections for mitigating sexual abuse in federal, state, and local detention facilities.
- **California Department of Justice.** The California DOJ can investigate local detention facilities and bring legal action against a local government if it determines that a practice or pattern of violation of constitutional rights has occurred in a detention facility administered by the local government.
- **Local Monitoring and Investigation Bodies.** A few counties in California have Inspector Generals and Citizen Oversight Boards. Depending on how they are designed, these entities conduct investigations into specific allegations of wrongdoing and/or conduct ongoing holistic monitoring of the conditions inside the facilities. In addition, county grand juries and juvenile justice commissions may inquire into the conditions of county detention facilities.
- **Nongovernmental Entities.** Media and advocacy organizations contribute to oversight by making conditions inside local detention facilities more widely known to the public and can put pressure on local officials to address problems.

requires inmates to receive a written copy of facility rules would disadvantage inmates who are visually impaired or illiterate, unless the standard requires—as the BSCC standards currently do—staff to communicate the rules verbally to inmates who cannot read them. Moreover, uniform application of

disciplinary policies could disproportionately impact inmates with mental health needs. For example, placement of inmates with behavioral problems caused by their mental health treatment needs into solitary confinement can worsen their mental health condition. In other words, 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. For example, during the first quarter of 2020, 28 percent of Los Angeles County’s jail inmates reported that they are homeless and 35 percent required mental health treatment. Given these concerns, we recommend that an explicit goal of the BSCC standards and inspections program be to promote equitable facility operations to ensure that all inmates and youth in local detention facilities experience legal, humane, and safe conditions.

***Program Goal: Provide Technical Assistance and Statewide Leadership to Facilitate Systemic Improvement.*** As discussed above, state-level standards and inspections agencies can enable local stakeholders to hold facilities accountable and change policies or practices. However, in some cases, facilities’ noncompliance with standards is rooted in deeper issues that are difficult to address, such as overcrowding, outdated or dilapidated infrastructure, and staff vacancies. In these cases, solutions—such as constructing a new jail or implementing new staff recruitment practices—may take years to implement, require novel strategies, or require collaboration across multiple decision-makers.

State-level standards and inspections agencies are well-positioned to support local communities in meeting standards—including addressing root causes of noncompliance—by providing technical assistance and statewide leadership. For example, if an inspector determines that jail staff used a restraint device inappropriately, he or she could help the jail administrator identify training for staff and/or assess whether any revisions to the jail’s policy and procedures are needed. Moreover, because they visit facilities throughout the state, inspectors are in a position to facilitate knowledge sharing between facilities and can identify systemic challenges faced statewide. This information can be used by leaders, such as boards of supervisors or the Legislature, to address these problems. Accordingly, we recommend that a specific goal of the BSCC standards and inspection program

be to provide technical assistance and statewide leadership to facilitate systemic improvement in facility conditions.

## **BALANCE BOARD MEMBERSHIP TO FACILITATE OVERSIGHT**

***Board Lacks Balanced Perspectives.*** In order to ensure that BSCC has sufficient expertise and guidance in overseeing local detention facilities based on the above mission and goals, we find that it is important for the board to reflect a balanced perspective. However, 6 of the 13 BSCC board members are currently administrators of correctional agencies, with at least 4 of them overseeing detention facilities that are subject to the BSCC standards and inspection program. While those who operate detention facilities provide critical perspectives for standards development, they have an incentive to avoid approving standards that they believe would be difficult or costly to meet. This raises questions about their ability to provide objective external oversight of their own operations and those of other counties. 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 condition issues. This lack of expertise in external oversight of detention facilities is concerning given that approval of the standards is one of the board’s core functions and arguably more important duties given the standards’ nexus to health, life, and safety.

***Balance Perspective of Correctional Administrators With Experts in Oversight.*** To achieve a balance of perspectives and expertise that is more conducive to providing oversight of local detention facilities, we recommend that the Legislature adopt legislation to add board members with professional expertise in advocacy for and oversight of detention conditions. To the extent that the Legislature prefers not to increase the number of board members, it could make room for new members by removing current members. This could be achieved in a variety of ways. For example, the Legislature could remove the Secretary of CDCR and Director of the Division of Adult Parole Operations, as the work of BSCC is almost entirely

focused on local—not state—corrections. (We note that BSCC could still incorporate input from CDCR by involving CDCR staff in working groups or inviting CDCR leaders to attend BSCC meetings as needed.)

We also recommend that more board members be subject to appointment by the Legislature. This change would create a better balance between Governor’s and legislative appointees on the board, which could enhance legislative oversight of the board. We note that balancing the perspective of the board members would likely help BSCC in its other functions as well. For example, having more balanced perspectives and expertise could help BSCC in setting standards for the selection and training of local detention facility staff and allocating grant funds.

## REQUIRE PLAN TO ALIGN PROGRAM WITH MISSION AND GOALS

Various programmatic changes will be required to align the BSCC’s standards and inspection program with our proposed mission and goals. Accordingly, we recommend that the Legislature direct BSCC to develop a detailed plan for how to align the program with the above mission and goals. Upon receiving this plan, the Legislature will be better able to determine whether any statutory changes are needed and/or whether to provide BSCC with additional resources to implement the plan. Furthermore, by helping to align the program with its mission and goals, the plan will facilitate

future evaluation of program effectiveness. To guide development of the plan, we recommend that the Legislature require that the plan include certain elements, which are summarized in **Figure 4** and discussed further below.

### Standards Reflecting Minimum Legal, Safe, and Humane Conditions

**Ensure Adequate Specificity in Standards Aligned to Mission and Goals.** We find that insufficient specificity in the current standards allows for subminimal policies and practices. For example, the standard on the use of restraint devices in adult facilities specifies that the jail must develop a written policy on the use of such devices that addresses various topics, including inmates’ hydration and sanitation needs. However, the standard does not provide a minimum frequency at which inmates’ hydration and sanitation needs must be addressed. Accordingly, a jail could craft a policy that provides for such needs every 2 hours or every 12 hours and still be in compliance. However, providing for an inmate’s hydration and sanitation needs only once every 12 hours is not humane. This means that some current standards do not communicate how to effectively minimize legal liability or what safe and humane practices are. Furthermore, this lack of specificity undermines the transparency created through inspections and reporting. For example, knowing that a jail is in compliance with the current restraint device standard does not inform stakeholders whether the facility addresses hydration and sanitation needs humanely. Given this, we recommend that

**Figure 4**

### Key Elements of Plan to Align Standards and Inspections Program With Mission and Goals

- ✓ **Standards Reflecting Minimum Legal, Safe, and Humane Conditions**
- ✓ **High-Quality, Risk-Based Inspection Strategy to Ensure Pressing Issues Are Found Quickly**
- ✓ **Specific Benchmarks to Ensure Inspections Effectively Provide Transparency**
- ✓ **Quality Reporting to Support Transparency and Accountability**
- ✓ **Technical Assistance and Statewide Leadership**

the Legislature require that the plan developed by BSCC outline how the standards will be revised to be more specific in their requirements and better align with the program’s mission and goals, while still allowing for adequate flexibility to adapt to local needs. We note that, if any standards are substantially changed as a result, BSCC could consider whether to establish intermediate benchmarks to allow facilities time to come into compliance.

***Ensure Standards Are Equitable.*** As discussed above, standards that are not crafted with acknowledgement that different groups have different needs could inadvertently create inequitable outcomes. Accordingly, the plan should outline how the standards will be revised to ensure that they adequately address the specialized needs of certain populations of inmates and youth. For example, BSCC could consider producing a separate set of standards for women’s detention facilities given that women often have substantially different needs and circumstances than men in correctional settings. By promulgating standards that appropriately acknowledge different needs between groups, BSCC can support the goal of ensuring the equitable provision of legal, humane, and safe conditions for *all* inmates and youth.

***Ensure Working Groups Have Adequate Expertise and Guidance to Develop Standards.*** To facilitate the improvement of the standards as described above, BSCC will need to re-think its standard revision process for two reasons. First, it appears that the current process does not consistently involve sufficient expertise or the balance of perspectives necessary to develop standards as described above. Similar to the BSCC board itself, the working groups tend to be dominated by correctional administrators. Furthermore, the working groups tend to lack members with professional expertise in standards development and oversight of detention conditions, such as attorneys who litigate detention facility conditions. This may be, in part, because BSCC does not pay people to participate in the working groups. Second, working group members are not given clear guidance about the goals of the standards and strategies for crafting effective standards. For example, members are not

given clear guidance about what constitutes “minimum” or “best practice.”

Accordingly, the plan should outline how BSCC will balance working group membership between correctional administrators; people with professional expertise in oversight of detention conditions and standards development; and others, such as formerly incarcerated people. More specifically, the plan should consider what additional steps—such as expanded recruitment efforts or paying working group members—BSCC will take to achieve a more balanced working group membership that includes necessary professional expertise in oversight. The plan should also outline how participants will be provided with clear guidance on the goals of the standards and strategies for developing effective standards aligned with the goals. For example, BSCC could identify other states with particularly effective standards and provide these to working group members as case studies.

### **High-Quality, Risk-Based Inspection Strategy to Ensure Pressing Issues Are Found Quickly**

Historically, BSCC has inspected each facility once every two years, irrespective of the facilities’ track records. As a result, issues have been less likely to be identified and resolved in a timely way at problematic facilities, which is essential given that some issues impact the life and safety of individuals. However, BSCC recently adopted a new inspection process that involves an additional inspection at facilities that were previously found to have more than two significant items of noncompliance. This shift is a positive step. However, the strategy does not include other key indicators of facility performance such as process data (like reported use of restraint devices), outcome data (like numbers of suicides or assaults), and standards violations reported by the public. Such information would likely be useful to help target inspections. We note that the Texas Commission on Jail Standards—which operates the state’s standards and inspections program—conducts additional inspections at facilities where data, such as numbers of inmate deaths and public complaints, suggest problems may exist.



Accordingly, the plan developed by BSCC should include a consideration of additional information to inform the inspection strategy and further advance the mission and goals of the program. Specifically, BSCC should consider data points used by other states, such as Texas, including violations reported by the public. We note that incorporating violations reported by the public would require the development of a complaint intake system. Recently passed legislation creates an ombudsman position within the Health and Human Services Agency to receive complaints about juvenile facilities. BSCC could analyze the outcomes of this approach as part of its plan development process. The plan should also include a strategy for how BSCC will target inspections, such as by targeting partial unannounced inspections focused on a specific area of concern raised by complaints outside of the normal inspection process. This would further the goal of facilitating transparency and accountability to promote legal, humane, and safe conditions.

### **Specific Benchmarks to Ensure Inspections Effectively Provide Transparency**

BSCC has not established clear and publically available benchmarks for the quality and consistency of inspections. For example, to assess whether facilities are providing inmates with adequate exercise, inspectors may review facility log books of recreation times and speak with inmates. However, the amount of documentation reviewed and the number of inmates spoken with to assess compliance is currently unclear. Furthermore, in some cases, the standards use language that is subject to individual interpretation. For example, the standards require inmates have “reasonable” access to a telephone, which can be critical to facilitate access to inmates’ attorneys and families. However, it is not clear how inspectors decide what is reasonable or if inspectors interpret the term similarly. These factors result in the quality and consistency of information gathered via the inspections being unclear, which undermines transparency created by the standards and inspections. Accordingly, BSCC’s plan should, at a minimum, indicate how it 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**

***Require Inspectors to Report Issues of Concern Beyond Noncompliance With Standards.*** Currently, while BSCC staff inspect facilities, they might become aware of concerning practices that run counter to the informal mission of the program but are not in direct violation of the standards. For example, in the course of viewing videos of staff using force on an inmate to assess compliance with a standard related to the use of force, inspectors may notice a pattern of staff directing racial slurs toward inmates. However, if the concerning practice is not a violation of the standards, it would not be documented under BSCC’s existing practices. This is a missed opportunity to address concerning practices that could lead to violations of standards or worse. Accordingly, as a part of its plan, BSCC should recommend any statutory changes to its authority that it believes would be necessary to allow it to document concerning practices that are not direct violations of the standards. By surfacing these concerns, BSCC could support the goals of providing transparency around, and facilitating systemic improvement in, conditions of detention. This is because stakeholders, local leaders, BSCC, or the Legislature could use the information to help proactively address the problem, such as by providing additional training to staff or changing the standards themselves.

***Ensure Reports Are Easy to Understand and Clearly Describe Nature of Violation.*** Currently, BSCC inspection reports appear to be written with correctional staff and administrators as the intended audience. This is because the reports often use correctional jargon, which is not easily understood by lay audiences. Accordingly, it can be difficult for non-correctional professionals to understand the nature of the violation and its implications based on the inspection report alone. To align the program with the goal of creating transparency around conditions of detention,

stakeholders—such as county supervisors and members of the public—must be able to understand the reports. Accordingly, BSCC’s plan should include discussion of how it will ensure that lay audiences are able to understand its inspection reports.

***Ensure Reports Facilitate Identification of Systemic Issues.*** BSCC publishes separate reports on each county’s compliance with the standards during a given inspection cycle. However, this method does not facilitate comparison of how counties perform across time or relative to each other. In order to make such comparisons, one would have to review and compile information from dozens of separate reports. This makes it difficult to identify systemic problems with detention facility conditions. This is inconsistent with our recommended goal of providing technical assistance and statewide leadership to facilitate systemic improvement. Accordingly, BSCC’s plan should include a strategy to revise the way it presents data to facilitate identification of trends across facilities, counties, and over time.

As required by statute, BSCC submits to the Legislature at the end of each two-year inspection cycle, a list of facilities that were found out of compliance along with the regulation that was violated. However, this report is of limited use because it does not communicate any information about the underlying nature of the violations and whether BSCC observed systemic issues underlying areas of noncompliance that the Legislature should be aware of. Furthermore, as discussed earlier in this report, BSCC does not fully comply with its statutory reporting requirement as it does not report estimates of the costs to address areas of noncompliance. However, given that facilities are encouraged to submit plans on how they will address areas of noncompliance and cost estimates should be a key consideration such plans, we think this information should be possible for BSCC to report. While we acknowledge that all cost estimates are inherently speculative to some degree, uncertain information is preferable to no information.

Given these issues, BSCC’s current reporting practices are inconsistent with the goals of facilitating transparency to promote legal, humane,

and safe conditions and providing technical assistance and statewide leadership to facilitate systemic improvement. Moreover, it is important for the Legislature to have this information as it creates laws affecting statewide detention facility conditions and considers whether to provide resources for facilities. Accordingly, BSCC’s plan should include recommendations to modify its statutory reporting requirement as needed in order to provide useful information to the Legislature.

***Issue Special Reports to Highlight Most Serious Issues.*** As mentioned above, BSCC posts inspection reports to its website and submits a summary report at the end of its two-year inspection cycle. However, certain standards violations that are particularly severe or have a close nexus to safety concerns may warrant immediate reporting. For example, the state’s Office of the Inspector General (OIG), which monitors internal investigations and the employee disciplinary process of the state prisons, reports semiannually on its findings. However, OIG may issue a separate public report regarding a case when it has determined that the handling of a case was unusually poor and involved serious errors. By adopting a similar approach, BSCC could ensure that the level of transparency afforded by the inspections and reporting process matches the severity and urgency of violations that result in conditions that are not legal, humane, and safe. Accordingly, BSCC’s plan should include a strategy for producing these out-of-cycle reports as needed along with any recommended changes to its statutory reporting requirements.

## **Technical Assistance and Statewide Leadership**

***Increase Capacity for Longer-Term Technical Assistance.*** Facilities’ failure to comply with standards may be rooted in systemic issues, such as hiring shortages, overcrowding, or physical plant issues. These issues generally cannot be addressed by the existing short-term technical assistance provided by BSCC nor within the 60-day time frame that BSCC gives facilities to address areas of noncompliance. Furthermore, these complex issues may require novel solutions or negotiation across multiple decision-makers, including sheriffs, chief

probation officers, boards of supervisors, judges, and district attorneys. Accordingly, in these cases, counties may simply continue to remain out of compliance.

BSCC should consider contracting with a couple detention facility management consultants on a pilot basis to provide this longer-term, more complex technical assistance to facilities. These consultants would be available to work with facilities and their stakeholders for longer than the 60-day compliance period. We note that Tennessee has one such facility management consultant—based at the University of Tennessee’s County Technical Assistance Service—that works closely with the agency that oversees Tennessee’s minimum standards and inspections program for local detention facilities. The consultant provides

longer-term technical assistance to local detention facilities as needed, including working with local stakeholders to facilitate collective problem identification and action planning processes around systemic issues faced by facilities.

***Highlight Promising Practices.*** Given that the BSCC staff regularly visit local detention facilities throughout the state, BSCC has a relatively unique opportunity to facilitate sharing of promising practices and effective solutions to shared challenges between counties. Accordingly, in developing the plan, BSCC should give consideration to how its activities and products can help highlight and promote promising practices to facilitate continuous, systemic improvement in detention facilities through these types of statewide leadership.

## CONCLUSION

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The BSCC standards and inspections program provides an opportunity for state assistance and oversight of local detention facilities—which is currently of particular interest to members of the Legislature. However, it is currently difficult to assess the effectiveness of the program because it lacks a clearly defined mission and goals. Accordingly, we recommend that the Legislature establish the program’s mission in statute, which we suggest be to promote legal, humane, and safe conditions for youth, inmates, and staff in local detention facilities. To further this mission, we recommend that the Legislature establish four goals for the program: (1) maintain standards that help local leaders determine and meet legal requirements; (2) facilitate transparency and accountability through standards and inspections; (3) promote equitable provision of legal, humane,

and safe conditions; and (4) provide technical assistance and statewide leadership to facilitate systemic improvement in detention conditions. To meet these goals, we recommend the Legislature revise BSCC board membership to achieve a culture more conducive to this mission and goals and direct BSCC to develop a plan to align the program with the new statutory mission and goals. These various steps will help local leaders to promote legal, humane, and safe conditions in detention facilities while providing other stakeholders with better information about the conditions in local detention facilities that they may use to hold local leaders accountable. Furthermore, the steps will enhance the Legislature’s ability to conduct oversight of the standards and inspections program.

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This report was prepared by Caitlin O’Neil and reviewed by Drew Soderborg and Anthony Simbol. The Legislative Analyst’s Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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