SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 263 (Arambula)
Version: April 15, 2021
Hearing Date: July 6, 2021
Fiscal: No
Urgency: Yes
ME

SUBJECT

Private detention facilities

DIGEST

In line with California's interest in ensuring the safety and welfare of its residents and in order to protect incarcerated individuals from serious harm within our state border, this bill requires a for-profit private detention facility to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

EXECUTIVE SUMMARY

For-profit prison corporations operate private detention facilities in California that hold Californians against their will pursuant to criminal and civil laws. There are numerous documented abuses of people held in for-profit run detention facilities in California. For-profit prison corporations have not limited their business ventures to profiting from the incarceration of Californians convicted of crimes; private prison corporations also profit from the incarceration of Californians in civil detention. In line with California's interest in ensuring the safety and welfare of its residents, the Legislature passed SB 29 (Lara, Ch. 494, Stats. 2017) which provided, as of January 1, 2018, contracting restrictions and new notice and public hearing requirements upon local governments and local law enforcement agencies with respect to contracts, building permits, and other official actions involving the federal government, federal agencies, or private corporations seeking to house or detain noncitizens for purposes of civil immigration detention. Additionally, AB 32 (Bonta, Ch. 1739, Stats. 2019) was enacted to phase in the abolition of the private for-profit prison industry from our state. Nonetheless, some facilities run by for-profit prison corporations still exist in California.

For-profit prison corporations owe a fiduciary duty to their shareholders. Their mission is to maximize profits for their investors. These for-profit corporations have a documented history of operating in a manner that is detrimental to the health and

welfare of those detained. With the spread of COVID-19 in prisons and detention facilities, the health and welfare of those in detention is critical, not only to the individuals detained, but to the surrounding communities that may be impacted by decisions made by those operating these facilities. As a result, it is critical that for-profit prison corporations are held accountable and comply with strict regulations related to health, welfare, and safety. To this end, the Legislature passed AB 3228 (Bonta, Ch. 190, Stats. 2020) last year. AB 3228 requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations and provides a private right of action for an individual injured by noncompliance with these standards.

The bill currently before this Committee builds on these prior bills in an attempt to protect the health, safety and welfare of those detained in private for-profit facilities. This urgency measure is sponsored by Immigrant Defense Advocates, Nextgen California, and the California Collaborative for Immigrant Justice. The bill is supported by health organizations, including the Health Officers Association of California, County Health Executives Association of California, and the California Medical Association. The bill is also supported by various civil rights organizations, immigrant rights organizations, the Riverside Sheriffs' Association and others. The bill passed out of the Senate Committee on Public Safety with a 4-0 vote and has no registered opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Prohibits the operation of a for-profit detention facility within the state, as specified. (Penal Code § 9501 & § 9502 (a) – (g).)

2) Provides that the prohibition of the operation of a for-profit detention facility within the state does not apply to any privately owned property or facility that is leased and operated by CDCR or a county sheriff or other law enforcement agency. (Penal Code § 9503.)

3) Provides that the prohibition of the operation of a for-profit detention facility within the state does not apply to those that operate pursuant to a valid contract with a government entity that was in effect before January 1, 2020, for the duration of that contract, not to include any extensions made to or authorized by the contract. (Penal Code § 9505 (a).)

4) Provides that on or after January 1, 2020, CDCR: (a) shall not enter into a contract with a private, for-profit prison facility located in or outside of the state to provide housing for state prison inmates; and (b) shall not renew an existing contract with a private, for-profit prison facility located in or outside of the state to incarcerate state prison inmates. (Penal Code § 5003.1 (a) & (b).)

5) Provides that on or after January 1, 2028, a state prison inmate or other person under the jurisdiction of CDCR shall not be incarcerated in a private, for-profit prison facility. (Penal Code section 5003.1 (c).)

6) Provides that a "private, for-profit prison facility" does not include a facility that is privately owned, but is leased and operated by CDCR. (Penal Code section 5003.1 (d).)

7) Specifies that the detention facility ban will not get in the way of the state's required compliance with a specified federal court order. (Penal Code section 5003.1 (e).)

8) Requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations and provides a private right of action for an individual injured by noncompliance with these standards, as specified, and allows the court to award a prevailing plaintiff reasonable attorney's fees and costs. (Gov. Code § 7320)

9) Provides, as of January 1, 2018, contracting restrictions and new notice and public hearing requirements, as specified, upon local governments and local law enforcement agencies with respect to contracts, building permits, and other official actions involving the federal government, federal agencies, or private corporations seeking to house or detain noncitizens for purposes of civil immigration detention. (Civil Code § 1670.9.).

This bill:

1) Specifies that it is the intent of the Legislature, in keeping with its obligation to safeguard the humane and just treatment of all individuals located within California, to ensure that private detention facility operators within the State of California respect and adhere to public health orders and occupational safety and health regulations, thus ensuring the welfare of those individuals detained or working in these facilities and protecting public health with respect to the threat posed by the COVID-19.

2) Provides that a private detention facility operator, as defined, shall comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

3) Specifies that this bill shall not be construed to limit or otherwise modify the authority, powers, or duties of state or local public health officers or other officials with regard to state prisons, county jails, or other state or local correctional facilities.

4) Includes an urgency clause.

COMMENTS

1. Stated need for the bill

According to the author:

> AB 263, the Health Oversight and Leadership in Detention Act, takes steps to clarify that all private detention facilities in the state must abide by state and local public health orders.
>
> This bill is about holding private operators accountable for their actions and policies that impact public health. The bill is also about empowering our public health officers and providing them with a clear framework to secure our state. We need their leadership now more than ever and this bill makes their job easier.
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> At present, California is home to seven privately operated civil detention facilities that have the capacity to hold more than 7,200 individuals at any given time. These facilities pose a unique and critical challenge with respect to public health and safety during the COVID-19 pandemic and over the last year have been the site of massive outbreaks.
>
> The humanitarian crisis posed by the spread of COVID-19 in private immigration detention facilities in California can have disastrous consequences for those detained in these facilities, as well as neighboring communities. Outbreaks in these facilities can quickly overwhelm local hospitals and drain medical resources, threatening community health and public safety.
>
> By clarifying that all private detention facilities in the state must abide by state and local public health orders, AB 263 ensures statewide coordination that will be needed to secure our state during the COVID-19 pandemic.

2. Documented serious abuses at facilities operated by for-profit prison corporations, including facilities in California

The United States Department of Justice's Office of the Inspector General (USDOJ) conducted an investigation of private prisons and issued a report in 2016. (*Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, August 2016, available at https://oig.justice.gov/reports/2016/e1606.pdf (as of June 30, 2021)). The for-profit facilities inspected by the USDOJ were operated by the GEO Group, Inc., Management and Training Corporation, and Corrections Corporation of America. The GEO Group and the Corrections Corporation of America are for-profit prison corporations that operate detention facilities in California. The GEO Group currently operates for-profit detention facilities in California that hold people against their will under criminal and

civil laws. As explained by the Assembly Public Safety Committee in their analysis for AB 32 (Bonta, 2019), the "investigation found that private prisons were less safe than federal prisons, poorly administered, and provided limited long-term savings for the federal government." The analysis further noted that "[p]rivate prisons also had higher assaults, both by inmates on other inmates and by inmates on staff." Additionally, the USDOJ discovered that new inmates in the for-profit facilities were improperly housed in the Special Housing Units (SHU), which are supposed to be for disciplinary or administrative segregation purposes. Numerous other studies and reports document problems with private for-profit prison facilities including the following: Justice Policy Institute, *The Problem with Private Prisons*, February 2, 2018, Tara Joy, available at http://www.justicepolicy.org/news/12006 (as of July 30, 2021); American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration*, November 2011, available at https://www.aclu.org/banking-bondage-private-prisons-and-mass-incarceration (as of June 30, 2021); and The Sentencing Project, *Capitalizing on Mass Incarceration: US Growth in Private Prisons,* August 2, 2018, Kara Gotsch & Vinay Basti, available at https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/ (as of June 30, 2021).

A 2019 report by the California Attorney General found general trends in detention facilities that included insufficient safety checks for individuals on suicide watch, inadequate mental health staffing, and untrained staff who play a role in whether or not an individual can access medical care.[1] It should be noted that there continues to be suicide at detention facilities operated by for-profit prison corporations and allegations that protocols to protect those at risk of suicide are not being followed.[2] Additionally, the Auditor of the State of California released the results of an audit of California civil detention facilities requested by the Joint Legislative Audit Committee. The Auditor wrote about serious health and safety problems at facilities operated by for-profit prison corporations and about suicide attempts, inadequate dental care, and cursory medical assessments.[3] Several additional reports detail deplorable conditions of detainees.[4]

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[1] Attorney General of California, *Immigration Detention in California,* (Feb. 2019), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf (as of June 30, 2020).

[2] *'This death was preventable': Family asks state to probe 74-year-old's suicide in ICE detention,* Rebecca Plevin, Palm Springs Desert Sun, (August 7, 2020) available at https://www.desertsun.com/story/news/politics/immigration/2020/08/07/family-asks-newsom-probe-choung-woohn-ahn-suicide-ice-mesa-verde/5504694002/ (as of June 30, 2021).

[3] Auditor of the State of California, *City and County Contracts with U.S. Immigration and Customs Enforcement: Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns*, (Feb. 2019), available at http://www.auditor.ca.gov/pdfs/reports/2018-117.pdf (as of June 30, 2021).

[4] *See:* Human Rights Watch, ACLU, National Immigrant Justice Center, Detention Watch Network, *Code Red, The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention,* (June 2018) available at https://www.aclu.org/report/code-red-fatal-consequences-dangerously-substandard-medical-care-immigration-detention (as of June 30, 2021); Los Angeles Times, *An immigrant detainee fell into a coma and died at 27, His family wants to know why,* Paloma Esquivel, (April 10, 2019) available at

United States District Judge Vince Chhabria of the Northern District of California granted a temporary restraining order in favor of the detainees at the Mesa Verde Detention Center, a detention facility operated by a for-profit prison corporation. The detainees filed the motion due to a COVID-19 outbreak at the facility where detainees and staff tested positive for COVID-19.[5] The Judge found that detainees "have demonstrated a strong likelihood of success on the merits of their claim that the defendants have violated the due process rights…through deliberate indifference to the risk of an outbreak." The Judge wrote that "the documentary evidence shows that the defendants have avoided widespread testing of staff and detainees at the facility, not for lack of tests, but for fear that positive test results would require them to implement safety measures that they apparently felt were not worth the trouble." As described by Judge Chhabria:

> The defendants, having responded to the health crisis in such a cavalier fashion (even in the face of litigation and a string of court orders), have lost the credibility to complain that the relief requested by the plaintiffs is too rigid or burdensome. The defendants have also lost the right to be trusted that they will accomplish on their own what the plaintiffs contend requires a court order to ensure.

The judge ordered the implementation of numerous measures immediately at the Mesa Verde facility, including to administer COVID-19 testing, as specified, and maintain a dormitory to segregate detainees who test positive for COVID-19. The judge highlighted that the defendants jeopardized the safety of their own employees and endangered the community at large.[6]

As reported by the legal publication, the Recorder[7]:

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https://www.latimes.com/local/lanow/la-me-ln-adelanto-detainee-death-20190410-story.html (as of June 30, 2021).

[5] *Angel de Jesus Zepeda Rivas, et al. v. David Jennings, et al.*, United States District Court Northern District of California, August 6, 2020, Case 3:20-cv-02731-VC, Document 500, pages 1-4.

[6] *ICE deliberately limited testing at Bakersfield immigration facility with COVID-19 outbreak,* Andrea Castillo, Los Angeles Times, (August 6, 2020) available at https://www.latimes.com/california/story/2020-08-06/amid-coronavirus-outbreak-at-bakersfield-immigration-facility-emails-show-ice-deliberately-limited-testing (as of August 8, 2020); *'People Are Terrified': SF Judge Orders COVID-19 Testing at ICE Facility,* Farida Jhabvala Romero, The California Report KQED, (August 7, 2020) available at https://www.kqed.org/news/11832472/people-are-terrified-sf-judge-orders-covid-19-testing-at-ice-facility (as of June 30, 2021).

[7] *'Start Working on It Now': Federal Judge Orders ICE Detention Center to Procure Quick-Turnaround COVID-19 Tests*, Alaina Lancaster, The Recorder, (August 5, 2020) available at https://www.law.com/therecorder/2020/08/05/start-working-on-it-now-federal-judge-orders-ice-detention-center-to-administer-quick-turnaround-covid-19-tests/?kw=%27Start%20Working%20on%20It%20Now%27:%20Federal%20Judge%20Orders%20ICE%20Detention%20Center%20to%20Procure%20Quick-Turnaround%20COVID-19%20Tests&utm_source=email&utm_medium=enl&utm_campaign=weekendedition&utm_content=20200809&utm_term=ca (as of June 30, 2021).

> The judge noted that one email he saw from facility administrators reflected a desire to avoid testing staff across the board, because that would result in more positive tests that ICE and GEO would have to deal with.
>
> "It's becoming more and more obvious that we're dealing with institutions that really don't seem to care," he said. "They don't actually care about the thing they should be caring about, which is avoiding the spread of the virus."

According to a February 22, 2021 CalMatters article, "571 people have tested positive for the coronavirus in California's seven immigration detention centers, including 270 at the Adelanto facility in San Bernardino County."[8] Since the publication of the CalMatters article, at least one other immigrant detainee has died from COVID-19 in California.[9]

AB 263 protects Californians from serious harm, including harms to their safety and welfare, as described above, in facilities operated by for-profit prison corporations, by ensuring that these facilities comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

3. AB 263 may be challenged in court and will likely survive the challenge

Since AB 263 regulates private for-profit corporations that operate facilities that detain people who are held against their will under criminal and civil law, including immigrants, for-profit prison corporations may sue California in an effort to enjoin the bill's enactment under various theories. They will likely lose. For-profit prison corporations will likely challenge AB 263 by arguing that AB 263 is preempted by federal immigration law, that AB 263 violates the Intergovernmental Immunity Doctrine, and that AB 263 interferes with existing contractual obligations. Relevant to the constitutional analysis, the bill provides for the following:

> The bill requires a private detention facility to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

a. California has the power to act to protect all within its borders

It is within the state's constitutional authority to regulate private companies and act to protect everyone in California. As explained by the 9th Circuit in *US v. State of*

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[8] *Immigration detention centers showcase California's vaccine chaos*, Ana B. Ibarra, CalMatters, (February 22, 2021), available at https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/ (as of June 27, 2021).

[9] *Detainee who plead for release from California ICE immigration center dies from COVID-19*, Joe Nelson, Mercury News, (March 23, 2021), available at https://www.mercurynews.com/2021/03/23/detainee-who-pleaded-for-release-from-ice-immigration-center-in-adelanto-dies-from-covid-19/ (as of June 27, 2021).

California, April 18, 2019, No. 18-16496; D.C. No. 2:18-cv-00490-JAM-KJN, "the Supreme Court noted that [i]n preemption analysis, courts should assume that 'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" (citation omitted) The court further noted that in that case, the "United States [did] not dispute that California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders, and neither the provisions of the INA that permit the federal government to contract with states and localities for detention purposes, *see* 8 U.S.C. §§ 1103(a)(11), 1231(g), nor the contracts themselves, demonstrate *any* intent, let alone 'clear and manifest,' that Congress intended to supersede this authority." (*US v. State of California,* p. 36-37)

The federal court case (*Geo Grp., Inc. v. Newsom,* Case No.: 19-CV-2491 JLS (WVG) S.D. Cal. Oct. 8, 2020) which upheld the ban on private detention facilities in California discussed the fact that regulation and oversight of health matters is generally an issue for state and local governments.

The court noted that "The [U.S.] Supreme Court has long recognized that "the regulation of health and safety matters is primarily, and historically, a matter of local concern" and pointed out that "the Ninth Circuit recently recognized that "California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders." *Geo Grp., Inc. v. Newsom*, at 45-46 (citing *Hillsborough City. v. Automated Med. Labs., Inc.* (1985), 471 U.S. 707, and *United States v. California* (9th Cir. 2019), 921 F.3d 865, 885-86 (9th Cir. 2019)).

The bill ensures the health and safety of those who are detained and work at private detention facilities by requiring a private detention facility to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

b. Not preempted by federal law

The question that will be before a court if an action is filed to enjoin enactment of AB 263, is whether the bill is preempted by federal law. Federalism, central to the constitutional design, adopts the principle that both the federal and state governments have elements of sovereignty the other is bound to respect. [citations omitted] (*Arizona v. United States*, 567 U.S. ___ (2012) p. 7). From the existence of two sovereigns follows the possibility that laws can be in conflict or at cross-purposes. (*Id.*) The Supremacy Clause provides a clear rule that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl. 2. (*Id.*) Under this principle, Congress has the power to preempt state law. [citations omitted] (*Id.*) There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision. [citations omitted] (*Id.*). State law must also give way to federal law in at least two other circumstances.

First, the states are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance. [citations omitted] (*Id.*) The intent to displace state law altogether can be inferred from a framework of regulation "so pervasive . . . that Congress left no room for the States to supplement it" or where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." [citations omitted] (*Id.* at 7-8) Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards. (*Id.* at 10) The basic premise of field preemption—that states may not enter, in any respect, an area the federal government has reserved for itself. (*Id.*)

Second, state laws are preempted when they conflict with federal law. [citations omitted] (*Id.* at 8) This includes cases where "compliance with both federal and state regulations is a physical impossibility," [citation omitted] and those instances where the challenged state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Hines, 312 U. S., at 67; see also Crosby, supra, at 373 ("What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects"). (*Id.* at 8)

To determine whether obstacle preemption exists, "the Supreme Court has instructed courts to employ their judgement, to be informed by examining the federal statute as a whole and identifying its purpose and intended effect." [citations and quotations omitted] (*US v. State of California,* p. 22-23) A high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act. [citations and quotations omitted] (*Id.* at 23) As explained by the 9th Circuit in *US v. California*, "it is a state's historic police power – not preemption—that [the court] must assume, unless clearly superseded by federal statute."

Obstacle preemption, "attaches to any state law, regardless of whether it specifically targets the federal government, but only if it imposes an obstructive, not-insignificant burden on federal activities." (*Id.* at 26) The provisions of this bill do not impose an obstructive burden on immigration law. The government of the United States has broad, undoubted power over the subject of immigration and the status of immigrants.[10] (*Arizona,* at 2) The enactment and enforcement of immigration laws relates to who may enter the country, who may become lawfully present, who may be deported, and who may be detained. AB 263 does not interfere with any determinations regarding who may be lawfully present in the United States or who may be deported, or who may enter the country, or who may be detained. Congress has specified which immigrants may be removed from the United States and the procedures for doing so. Immigrants may be removed if they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law. (*See* 8 U.S. Code

[10] The term "immigrant" is substituted for the term "alien."

§1227). A principal feature of the removal system is the broad discretion exercised by immigration officials. (*Arizona,* at 4) When the provisions of this bill are enacted, the federal government would still equally be able to determine who can enter this country, who may become lawfully present, who may be deported, who may be detained and who may be released from detention, for example through an immigration bond. AB 263 simply requires for-profit private prison corporations to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

The for-profit prison corporations may contend that requiring private detention facilities to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations intrudes on the field of immigration. However, AB 263 does not regulate immigration. As stated above, the provisions of the bill do not interfere with the federal government's determinations regarding the immigration status of immigrants within California. Moreover, AB 263 does not interfere with the federal government's determinations of who is detained and who is not detained. Whether a person is mandatorily or permissibly detained is determined through federal law and court decisions. Accordingly, California's decision to codify that for-profit prison corporations must comply with local and state public health orders and occupational safety and health regulations, is not an "obstacle" to the United States making immigration decisions, is not in conflict with federal immigration law, and therefore AB 263 is likely not preempted by federal immigration law.

c. *Does not violate the intergovernmental immunity doctrine*

"The doctrine of intergovernmental immunity is derived from the Supremacy Clause, U.S. Const., art. VI…" (*US v. State of California,* p. 22) As explained by the 9th Circuit in *United States v. State of California,* "simply put, intergovernmental immunity attaches only to state laws that discriminate against the federal government and burdens it in some way." *(Id.* at *25)* "Since the advent of the doctrine, intergovernmental immunity has attached where a state's discrimination negatively affected federal activities in some way. It is not implicated when a state merely references or even singles out federal activities in an otherwise innocuous enactment." (*Id.* at 26) The "Supreme Court has clarified that a state 'does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them.'" [citation omitted] (*Id.* at 27) AB 263 does not treat someone else better than it treats the federal government. AB 263 does not regulate the federal government; it regulates private, for-profit corporations that incarcerate people in California. That being said, even if a court analyzes the treatment of the federal government in comparison to the treatment of others, it would be clear that this bill does not treat someone else better than it treats the federal government. Specifically, the bill provides equal treatment of for-profit prison corporations that contract with the state to operate facilities that incarcerate detainees and for-profit prison corporations that contract with the federal government to operate facilities that incarcerate detainees. AB 263 requires a private detention operator to

comply with, and adhere to all local and state public health orders and occupational safety and health regulations. Accordingly, a for-profit prison corporation who challenges the enactment of AB 263 will not be able to demonstrate that for-profit prison corporations that operate facilities that house state detainees are treated better than for-profit prison corporations that operate facilities that house federal detainees. Therefore, a court will likely not find that AB 263 violates the intergovernmental immunity doctrine.

d. Does not interfere with existing contractual obligations

The U.S. Constitution provides that no state shall pass any law impairing the obligation of contracts (U.S. Const. art. 1, § 10.), and the California Constitution specifies that a law impairing the obligation of contracts may not be passed. (Cal. Const. art. 1, § 9.)

This bill requires that a private detention facility operator comply with, and adhere to all local and state public health orders and occupational safety and health regulation. To the extent that these requirements are challenged in court, it is important to understand that courts have not interpreted the Contracts Clause as imposing an absolute bar to the enactment of legislation that interferes with contracts (*Home Building & Loan Association v. Blaisdel* (1934) 290 U.S. 398, 428). Instead, courts examine "whether the state law is drawn in an "appropriate" and "reasonable" way to advance "a significant and legitimate public purpose." (*Sveen v. Melin* (2018) ___U.S.___ [138 S.Ct. 1815]. Internal citations omitted.)

Under the bill, the for-profit run private prison companies can still operate under any valid current contract with the government entities. However, if a court interprets this codification of their obligation to comply with health and safety standards, as interference with an existing contractual obligation, the interference would be subject to the test described above. To the extent that this law affects existing contractual obligations, the Supreme Court has been clear that a state government may do so if its action serves a significant and legitimate public purpose and is reasonably related to achieving that goal. The requirements of AB 263 clearly meet this standard in that they are a reasonable way of protecting those in California detention facilities, those working at the facilities, and those in the community, from documented harm. These for-profit detention facility operators have a history of disregarding the humanity of detainees and operating in ways that imperil the health and welfare of the detainees. That history is documented above in Comment 2. Codifying that the operators must comply with specified health and requirements is a reasonable way of achieving the goal of protecting the health and welfare of detainees, workers, and those in the community that will be exposed to COVID-19 due to the documented indifference of for-profit detention facility operators. Accordingly, a court will likely find that this statute is an appropriate and reasonable way of protecting the health, safety, and welfare of detainees.

SUPPORT

California Collaborative for Immigrant Justice (co-sponsor)
Immigrant Defense Advocates (co-sponsor)
NextGen California(co-sponsor)
ACLU of California
Advancing Justice-LA
Alianza Sacramento
Buen Vecino
California Attorneys for Criminal Justice
California Medical Association
California Pan-Ethnic Health Network
California Rural Legal Assistance Foundation
Campaign for Immigrant Detention Reform
Center for Gender & Refugee Studies
Central Valley Immigrant Integration Collaborative
Clergy and Laity United for Economic Justice
Coachella Valley Immigrant Dignity
Community Legal Services in East Palo Alto
County Health Executives Association of California
Disability Rights California
Dolores Street Community Services
Ella Baker Center for Human Rights
Familia: Trans Queer Liberation Movement
Hand in Hand: The Domestic Employers Network
Health Officers Association of California
Human Rights Watch
ICE Out of Marin
Immigrant Defenders Law Center
Immigrant Legal Defense
Inland Equity Partnership
Law Office of Helen Lawrence
Los Angeles Human Rights Initiative
National Association of Social Workers, California Chapter
NorCal Resist
Oakland Privacy
Oasis Legal Resist
Oasis Legal Services
Public Law Center
Reiki Center of the East Bay
Riverside Sheriffs' Association
San Francisco Public Defender
San Joaquin College of Law – New American Legal Clinic
Secure Justice

Southeast Asia Resource Action Center
Southern California Providers for Health Equity
STEP UP! Sacramento
University of San Francisco Immigration & Deportation Defense Clinic
VIDAS Legal Services (North Bay)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 334 (Durazo, 2021) In line with California's interest in ensuring the safety and welfare of its residents and in order to protect incarcerated individuals from serious harm within our state border, this bill requires private detention facilities to operate in compliance with specified health and safety standards and to maintain specified insurance coverages. The bill requires an insurer providing insurance to consider whether the private detention facility complies with prescribed standards. SB 334 is scheduled to be heard in the Assembly Committee on Public Safety on July 13, 2021.

Prior Legislation:

AB 3228 (Bonta, Ch. 190, Stats. 2020) requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations. This bill also provides a private right of action for an individual injured by noncompliance with the above standards, as specified, and allows the court to award a prevailing plaintiff reasonable attorney's fees and costs.

AB 32 (Bonta, Ch. 739, Stats. 2019) abolishes, in line with California's interest in ensuring the safety and welfare of its residents, the private for-profit prison industry from our state in order to protect incarcerated individuals from serious harm within our state border.

AB 33 (Bonta, 2019) would have required the California Public Employees' Retirement System and the California State Teachers' Retirement System to divest from private prison companies, from making new or renewing existing investments in such companies, and to constructively engage with private prison companies to establish whether the companies are transitioning their business model to another industry, among other provisions. The bill died in the Assembly Public Employment and Retirement Committee.

AB 1320 (Bonta, 2017) would have prohibited CDCR from entering into a contract with an out-of-state, private, for-profit prison on or after January 1, 2018, and would have prohibited CDCR from renewing a contract with an out-of-state, private, for-profit prison on or after January 1, 2020. The bill would also have prohibited, after January 1, 2021, any state prison inmate or other person under the jurisdiction of the department from being housed in any out-of-state, private, for-profit prison facility. The bill was vetoed by Governor Jerry Brown.

SB 29 (Lara, Ch. 494, Stats. 2017) established, after January 1, 2018, contracting restrictions and new notice and public hearing requirements, as specified, upon local governments and local law enforcement agencies with respect to contracts, building permits, and other official actions involving the federal government, federal agencies, or private corporations seeking to house or detain noncitizens for purposes of civil immigration detention.

AB 103 (Committee on Budget & Fiscal Review, Ch. 17, Stats. 2017) provided that the California Department of Justice must, until July 1, 2027, report on: conditions of confinement; the standard of care and due process provided to detainees; and the circumstances around the apprehension and transfer of detainees to facilities. The bill required the Attorney General, by March 1, 2019, to conduct a review of these facilities and to provide the Legislature and the Governor with a comprehensive report by March 1, 2019, outlining the findings of that review. It required the comprehensive report to be made public, as specified.

SB 1289 (Lara, 2016) would have prohibited local law enforcement agencies and local governments from contracting with for-profit entities to detain immigrants on behalf of federal immigration authorities. This bill would have required that immigrant detention facilities adhere to national immigration standards for the detention of immigrants. Further, this bill would have required that immigrants in detention be provided other legal rights, as specified. This bill would have authorized the Attorney General, district attorneys, and city attorneys to bring suits against detention facilities for violations of the national detention standards or violations of other legal rights created by this bill. The bill was vetoed by Governor Brown. Governor Brown subsequently signed SB 29 (Lara, Ch. 494, Stats. 2017).

PRIOR VOTES:

Senate Public Safety Committee (Ayes 4, Noes 0)
Assembly Floor (Ayes 71, Noes 0)
Assembly Public Safety Committee (Ayes 8, Noes 0)

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