

AMENDED IN SENATE APRIL 27, 1999
AMENDED IN SENATE APRIL 15, 1999
AMENDED IN SENATE MARCH 25, 1999
AMENDED IN SENATE FEBRUARY 25, 1999

SENATE BILL

No. 126

Introduced by Senator Polanco

December 22, 1998

An act to amend Sections 1170, 2801, 2807, and 2808 of, and to add Sections 2808.3 and 2808.5 to, the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as amended, Polanco. Corrections: inmate rehabilitation: Prison Industry Authority.

(1) Existing law states the findings and declarations of the Legislature that (a) the purpose of imprisonment for crime is punishment, (b) this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances, and (c) the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. Existing law provides that these findings and declarations shall not be construed to preclude programs, including educational programs, that are designed

to rehabilitate nonviolent, first-time felony offenders, and further provides that the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

This bill instead would provide that these findings and declarations shall not be construed to preclude educational, vocational, and drug treatment programs that are designed to rehabilitate nonviolent, first-time felony offenders and to reduce the rate of recidivism. The bill further would state the intent of the Legislature to encourage the development of policies and programs consistent with the intent to reduce the rate of recidivism.

(2) Existing law establishes the Prison Industry Authority under the direction of the Prison Industry Board and specifies the powers and duties of the board, its membership, and their compensation. The authority has jurisdiction over the operation of all industrial, agricultural, and service operations. Existing law also creates the Prison Industries Revolving Fund that is used to meet the expenses of the prison industries program, as specified. The board is also authorized to borrow money from the state and private sources to finance the program. The authority determines which work programs are to be established and the products to be made.

This bill would revise these provisions as follows:

(a) To provide that the purposes of the authority are, among other things, to provide productive employment that offers inmates a significant real world work experience and competitive work skills in order to increase their employability upon release through the development of skills, habits, and attitudes that employers seek and operate as a self-supporting prison work program.

(b) To specify that the products required to be purchased by the state or state agencies are substantially similar in either quality, cost, or availability to those available from commercial suppliers: *for this purpose and provide a definition of “substantially similar in cost.”*

(c) To include a list of specified additional powers and duties of the board.



(d) To require the Department of Finance, in consultation with the Prison Industry Authority and the Legislative Analyst's Office, to develop a display in the annual Budget Act of specified projected expenditures and revenues.

(e) To require the Bureau of State Audits to conduct a performance and financial audit of the Prison Industry Authority, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. With respect to Sections 4 to 8, inclusive,
2 of this act, the Legislature hereby finds and declares as
3 follows:

4 (a) Prison work programs, in addition to reducing
5 inmate idleness and providing an effective tool for inmate
6 management, have the potential for providing inmates
7 with needed skills to increase employability, enhance
8 self-worth, and ultimately reduce the likelihood of
9 recidivism.

10 (b) Rehabilitated parolees have historically suffered
11 from high levels of unemployment as compared to
12 California residents in the general population. In the
13 absence of appropriate interventions leading to increased
14 employability of this population of parolees, the
15 prevalence of repeat offenders will continue to
16 proliferate.

17 (c) Current law provides state agencies no recourse
18 but to purchase goods manufactured by the Prison
19 Industry Authority regardless of quality or cost when
20 compared to goods available through the private sector.

21 (d) There has been little ongoing legislative review of
22 Prison Industry Authority operations given the
23 authority's continuous appropriation of funding support,
24 which exempts the authority from oversight under the
25 annual Budget Act.

26 SEC. 2. With respect to Sections 4 to 8, inclusive, of
27 this act, the Legislature expresses its intent as follows:

1 (a) It is the intent of the Legislature that the mission
2 of the Prison Industry Authority shall be the providing of
3 productive work and training resources for inmates,
4 thereby fostering development of work force skills
5 leading to increased employability upon release.

6 (b) It is the intent of the Legislature that the
7 authority's mission of increasing employability of inmates
8 shall, to the extent feasible, be accomplished while
9 avoiding unnecessary displacement of California citizens
10 gainfully employed in the private sector.

11 (c) It is further the intent of the Legislature that this
12 chapter shall be designed to do all of the following:

13 (1) Revise the statutory mission of the Prison Industry
14 Authority to reflect a priority of increasing the
15 employability of inmates.

16 (2) Require an annual display of Prison Industry
17 Authority revenues and expenditures as part of the
18 annual Budget Act.

19 (3) Allow state agencies to seek waivers from purchase
20 of goods and services produced by the Prison Industry
21 Authority when evidence indicates those purchases do
22 not constitute a best value acquisition for the state when
23 compared to those products and services produced in
24 California by private companies.

25 (4) Increase program efficiency and administrative
26 accountability for fiscal stability and performance.

27 (5) Strengthen collaboration with industry and labor
28 in the planning and development of prison work
29 programs.

30 SEC. 3. Section 1170 of the Penal Code is amended to
31 read:

32 1170. (a) (1) The Legislature finds and declares that
33 the purpose of imprisonment for crime is punishment.
34 This purpose is best served by terms proportionate to the
35 seriousness of the offense with provision for uniformity in
36 the sentences of offenders committing the same offense
37 under similar circumstances. The Legislature further
38 finds and declares that the elimination of disparity and
39 the provision of uniformity of sentences can best be
40 achieved by determinate sentences fixed by statute in

1 proportion to the seriousness of the offense as determined
2 by the Legislature to be imposed by the court with
3 specified discretion.

4 (2) Paragraph (1) shall not be construed to preclude
5 programs, including educational, vocational, and drug
6 treatment programs, that are designed to rehabilitate
7 nonviolent, first-time felony offenders, and to reduce the
8 rate of recidivism. The Legislature encourages the
9 development of policies and programs designed to
10 educate and rehabilitate nonviolent, first-time felony
11 offenders consistent with the purpose of imprisonment,
12 and the intent to reduce the rate of recidivism.

13 (3) In any case in which the punishment prescribed by
14 statute for a person convicted of a public offense is a term
15 of imprisonment in the state prison of any specification of
16 three time periods, the court shall sentence the
17 defendant to one of the terms of imprisonment specified
18 unless the convicted person is given any other disposition
19 provided by law, including a fine, jail, probation, or the
20 suspension of imposition or execution of sentence or is
21 sentenced pursuant to subdivision (b) of Section 1168
22 because he or she had committed his or her crime prior
23 to July 1, 1977. In sentencing the convicted person, the
24 court shall apply the sentencing rules of the Judicial
25 Council. The court, unless it determines that there are
26 circumstances in mitigation of the punishment
27 prescribed, shall also impose any other term that it is
28 required by law to impose as an additional term. Nothing
29 in this article shall affect any provision of law that imposes
30 the death penalty, that authorizes or restricts the
31 granting of probation or suspending the execution or
32 imposition of sentence, or expressly provides for
33 imprisonment in the state prison for life. In any case in
34 which the amount of preimprisonment credit under
35 Section 2900.5 or any other provision of law is equal to or
36 exceeds any sentence imposed pursuant to this chapter,
37 the entire sentence shall be deemed to have been served
38 and the defendant shall not be actually delivered to the
39 custody of the Director of Corrections. The court shall
40 advise the defendant that he or she shall serve a period

1 of parole and order the defendant to report to the parole
2 office closest to the defendant's last legal residence, unless
3 the in-custody credits equal the total sentence, including
4 both confinement time and the period of parole. The
5 sentence shall be deemed a separate prior prison term
6 under Section 667.5, and a copy of the judgment and other
7 necessary documentation shall be forwarded to the
8 Director of Corrections.

9 (b) When a judgment of imprisonment is to be
10 imposed and the statute specifies three possible terms,
11 the court shall order imposition of the middle term, unless
12 there are circumstances in aggravation or mitigation of
13 the crime. At least four days prior to the time set for
14 imposition of judgment, either party or the victim, or the
15 family of the victim if the victim is deceased, may submit
16 a statement in aggravation or mitigation to dispute facts
17 in the record or the probation officer's report, or to
18 present additional facts. In determining whether there
19 are circumstances that justify imposition of the upper or
20 lower term, the court may consider the record in the case,
21 the probation officer's report, other reports including
22 reports received pursuant to Section 1203.03 and
23 statements in aggravation or mitigation submitted by the
24 prosecution, the defendant, or the victim, or the family of
25 the victim if the victim is deceased, and any further
26 evidence introduced at the sentencing hearing. The
27 court shall set forth on the record the facts and reasons for
28 imposing the upper or lower term. The court may not
29 impose an upper term by using the fact of any
30 enhancement upon which sentence is imposed under any
31 provision of law. A term of imprisonment shall not be
32 specified if imposition of sentence is suspended.

33 (c) The court shall state the reasons for its sentence
34 choice on the record at the time of sentencing. The court
35 shall also inform the defendant that as part of the
36 sentence after expiration of the term he or she may be on
37 parole for a period as provided in Section 3000.

38 (d) When a defendant subject to this section or
39 subdivision (b) of Section 1168 has been sentenced to be
40 imprisoned in the state prison and has been committed to



1 the custody of the Director of Corrections, the court may,
 2 within 120 days of the date of commitment on its own
 3 motion, or at any time upon the recommendation of the
 4 Director of Corrections or the Board of Prison Terms,
 5 recall the sentence and commitment previously ordered
 6 and resentence the defendant in the same manner as if
 7 he or she had not previously been sentenced, provided
 8 the new sentence, if any, is no greater than the initial
 9 sentence. The resentence under this subdivision shall
 10 apply the sentencing rules of the Judicial Council so as to
 11 eliminate disparity of sentences and to promote
 12 uniformity of sentencing. Credit shall be given for time
 13 served.

14 (e) (1) Notwithstanding any other law and consistent
 15 with paragraph (1) of subdivision (a), if the Director of
 16 Corrections or the Board of Prison Terms or both
 17 determine that a prisoner satisfies the criteria set forth in
 18 paragraph (2), the director or the board may recommend
 19 to the court that the prisoner's sentence be recalled.

20 (2) The court shall have the discretion to resentence
 21 or recall if the court finds both of the following:

22 (A) The prisoner is terminally ill with an incurable
 23 condition caused by an illness or disease that would
 24 produce death within six months, as determined by a
 25 physician employed by the department.

26 (B) The conditions under which the prisoner would be
 27 released or receive treatment do not pose a threat to
 28 public safety.

29 The Board of Prison Terms shall make findings
 30 pursuant to this subdivision before making a
 31 recommendation for resentence or recall to the court.
 32 This subdivision does not apply to a prisoner sentenced to
 33 death or a term of life without the possibility of parole.

34 (3) Within 10 days of receipt of a positive
 35 recommendation by the director or the board, the court
 36 shall hold a hearing to consider whether the prisoner's
 37 sentence should be recalled.

38 (4) The prisoner or his or her family member or
 39 designee may request consideration for recall and
 40 resentencing by contacting the chief medical officer at

1 the prison or the Director of Corrections. Upon receipt of
2 the request, if the director determines that the prisoner
3 satisfies the criteria set forth in paragraph (2), the
4 director or board may recommend to the court that the
5 prisoner's sentence be recalled. The director shall submit
6 a recommendation for release within 30 days in the case
7 of inmates sentenced to determinate terms and, in the
8 case of inmates sentenced to indeterminate terms, the
9 director may make a recommendation to the Board of
10 Prison Terms with respect to the inmates who have
11 applied under this section. The board shall consider this
12 information and make an independent judgment
13 pursuant to paragraph (2) and make findings related
14 thereto before rejecting the request or making a
15 recommendation to the court. This action shall be taken
16 at the next lawfully noticed board meeting.

17 (5) Any recommendation for recall submitted to the
18 court by the Director of Corrections or the Board of
19 Prison Terms shall include one or more medical
20 evaluations, a postrelease plan, and findings pursuant to
21 paragraph (2).

22 (6) If possible, the matter shall be heard before the
23 same judge of the court who sentenced the prisoner.

24 (f) Any sentence imposed under this article shall be
25 subject to the provisions of Sections 3000 and 3057 and any
26 other applicable provisions of law.

27 (g) A sentence to state prison for a determinate term
28 for which only one term is specified, is a sentence to state
29 prison under this section.

30 SEC. 4. Section 2801 of the Penal Code is amended to
31 read:

32 2801. The purposes of the authority are:

33 (a) To develop and operate industrial, agricultural,
34 and service enterprises employing prisoners in
35 institutions under the jurisdiction of the Department of
36 Corrections, which enterprises may be located either
37 within those institutions or elsewhere, all as may be
38 determined by the authority.

39 (b) To provide productive employment that offers
40 inmates a significant real world work experience and



1 competitive work skills in order to increase the
2 employability of inmates upon release through the
3 development of skills, habits, and attitudes that
4 employers seek.

5 (c) To operate a work program for prisoners that will
6 ultimately be self-supporting.

7 SEC. 5. Section 2807 of the Penal Code is amended to
8 read:

9 2807. (a) The authority is hereby authorized and
10 empowered to operate industrial, agricultural, and
11 service enterprises which will provide products and
12 services needed by the state, or any political subdivision
13 thereof, or by the federal government, or any
14 department, agency, or corporation thereof, or for any
15 other public use. Products may be purchased by state
16 agencies to be offered for sale to inmates of the
17 department and to any other person under the care of the
18 state who resides in state-operated institutional facilities.
19 Fresh meat may be purchased by food service operations
20 in state-owned facilities and sold for onsite consumption.

21 (b) All things authorized to be produced under
22 subdivision (a) shall be purchased by the state, or any
23 agency thereof, provided these products are substantially
24 similar in either quality, cost, or availability to those
25 available from commercial suppliers. *For purposes of this*
26 *subdivision, “substantially similar in cost” means that the*
27 *cost of the Prison Industry Authority products or services*
28 *is not more than 15 percent greater than the cost of*
29 *similar items available from a commercial supplier.* State
30 agencies may request waivers from the Director of the
31 Department of General Services for those products that
32 do not meet criteria related to quality, cost, or availability.
33 Prison Industry Authority goods and services may also be
34 purchased by any county, city, district, or political
35 subdivision, or any agency thereof, or by any state agency
36 to offer for sale to persons residing in state-operated
37 institutions, at the prices fixed by the board. State
38 agencies shall make maximum utilization of these
39 products, and shall consult with the staff of the authority

1 to develop new products and adapt existing products to
2 meet their needs.

3 (c) The following state agencies and officers shall
4 report by January 1 of each year to the Director of
5 General Services and to the Chairperson of the Joint
6 Legislative Budget Committee on their use in the prior
7 fiscal year of goods and services provided by the
8 authority, and shall include comments on planned future
9 use of these goods and services:

10 (1) The State and Consumer Services Agency.

11 (2) The Business, Transportation and Housing
12 Agency.

13 (3) The Health and Welfare Agency.

14 (4) The Resources Agency.

15 (5) The Youth and Adult Correctional Agency.

16 (6) The California Environmental Protection Agency.

17 (7) The Department of Food and Agriculture.

18 (8) The Attorney General.

19 (9) The Secretary of State.

20 (10) The Treasurer.

21 (11) The Controller.

22 (12) The Superintendent of Public Instruction.

23 Reports submitted under this subdivision shall be
24 specific as to department and unit under each agency's or
25 office's jurisdiction.

26 SEC. 6. Section 2808 of the Penal Code is amended to
27 read:

28 2808. The board shall, in the exercise of its duties, have
29 all the powers and do all the things which the board of
30 directors of a private corporation would do, except as
31 specifically limited in this article, including, but not
32 limited to, the following:

33 (a) To enter into contracts and leases, execute leases,
34 pledge the equipment, inventory and supplies under the
35 control of the authority and the anticipated future
36 receipts of any enterprise under the jurisdiction of the
37 authority as collateral for loans, and execute other
38 necessary instruments and documents.



1 (b) To assure that all funds received by the authority
2 are kept in commercial accounts according to standard
3 accounting practices.

4 (c) To arrange for an independent annual audit.

5 (d) To review and approve the annual budget for the
6 authority, in order to assure that the solvency of the
7 Prison Industries Revolving Fund is maintained.

8 (e) To contract to employ a general manager to serve
9 as the chief administrative officer of the authority. The
10 person so appointed shall serve at the pleasure of the
11 chairperson. The general manager shall have wide and
12 successful experience with a productive enterprise and
13 have a demonstrated appreciation of the problems
14 associated with prison management.

15 (f) To apply for and administer grants and contracts of
16 all kinds.

17 (g) To establish, notwithstanding any other provision
18 of law, procedures governing the purchase of raw
19 materials, component parts, and any other goods and
20 services which may be needed by the authority or in the
21 operation of any enterprise under its jurisdiction. These
22 procedures shall contain provisions for appeal to the
23 board from any action taken in connection with them.

24 (h) To establish, expand, diminish, or discontinue
25 industrial, agricultural and service enterprises under its
26 jurisdiction to enable the authority to operate as a
27 self-supporting organization, to provide as much
28 employment for inmates as is feasible, and to provide
29 diversified work activities to minimize the impact on
30 existing private industry in the state.

31 (i) To hold public hearings pursuant to paragraph (h)
32 above to provide an opportunity for persons or
33 organizations who may be affected to appear and present
34 testimony concerning the plans and activities of the
35 authority. The authority shall assure adequate public
36 notice of these hearings. No new industrial, agricultural,
37 or service enterprise which involves a gross annual
38 production of more than fifty thousand dollars (\$50,000)
39 shall be established unless and until a hearing concerning
40 the enterprise has been held by a committee of persons

1 designated by the board including at least two board
2 members. The board shall take into consideration the
3 effect of a proposed enterprise on California industry and
4 shall not approve the establishment of the enterprise if
5 the board determines it would have a comprehensive and
6 substantial adverse impact on California industry which
7 cannot be mitigated.

8 (j) To periodically determine the prices at which
9 activities, supplies, and services shall be sold.

10 (k) To report to the Legislature in writing, on or
11 before February 1 of each year, regarding:

12 (1) The financial activity and condition of each
13 enterprise under its jurisdiction.

14 (2) The plans of the board regarding any significant
15 changes in existing operations.

16 (3) The plans of the board regarding the development
17 of new enterprises.

18 (4) A breakdown, by institution, of the number of
19 prisoners at each institution, working in enterprises
20 under the jurisdiction of the authority, said number to
21 indicate the number of prisoners which are not working
22 full time.

23 (l) To report to the Governor and the Legislature, not
24 later than April 1, 2000, regarding recommendations to
25 maximize the ability of prison work programs to achieve
26 their statutory mission as provided by Section 2801.

27 (m) To make recommendations to maximize
28 utilization of prison work programs to defray
29 incarceration costs through strategies that include, but
30 are not limited to, facilitating joint ventures and public or
31 private partnerships that allow a significant portion of
32 inmate wages to be used to reduce costs of room and
33 board, taxes, court fees, fines, and family support.

34 (n) To make recommendations based on input from
35 representatives of both labor and the private sector on
36 new industries and work force development programs
37 that fill an unmet labor need in the commercial
38 marketplace. These new industry activities may include,
39 but are not limited to, all of the following:

40 (1) Work currently being performed offshore.

(2) Development of apprenticeship programs in skilled trades in areas identified as having skill shortages.

(3) Industry program activities for which there is societal benefit including environmental restoration, disaster assistance projects, or manufacture of assistive tools and other enhancements for disabled persons.

(o) To develop skills assessment tools and performance measures in order to evaluate the extent to which prison work programs have increased, or are increasing, inmate employability upon release. For purposes of this subdivision, findings provided by the Department of Corrections study of the effectiveness of inmate academic, work, and Prison Industry Authority programs, as authorized by supplemental report language contained in the 1998–99 Annual Budget Act, shall be considered by the Prison Industry Board as evaluation criteria are developed.

(p) To develop and implement continued strategies to increase efficiency in business operations, including results-oriented Total Quality Management programs, installation of computerized systems to better track product costs, establishment of a program to shorten delivery schedules where feasible, and improvement of marketing and market research to maximize product sales.

(q) To develop and recommend a strategy for implementation, not later than September 1, 2001, that provides for tracking of inmate recidivism for purposes of identifying the impact of prison work programs on sustained inmate rehabilitation following release. For purposes of this subdivision, the board's recommendations shall consider the findings provided by the Department of Corrections' statistical analysis of the impact of prison academic and work programs on inmate postrelease recidivism, as authorized by the 1998–99 Budget Act.

SEC. 7. Section 2808.3 is added to the Penal Code, to read:

2808.3. The Department of Finance, in consultation with the Prison Industry Authority (PIA) and the

1 Legislative Analyst's Office, shall develop a display in the
2 annual Budget Act of projected expenditures and
3 revenues for the PIA, the Prison Industry Board, and the
4 Prison Industries Revolving Fund.

5 SEC. 8. Section 2808.5 is added to the Penal Code, to
6 read:

7 2808.5. (a) The Bureau of State Audits shall conduct
8 a performance and financial audit of the Prison Industry
9 Authority every two years.

10 (b) The audit shall assess the following:

11 (1) The authority's performance as measured against
12 program goals, objectives, and predetermined
13 performance measures.

14 (2) The effectiveness of applicable accounting,
15 inventory control, and other relevant management
16 procedures.

17 (3) The extent to which the program has achieved
18 self-sufficiency, including the impact of state agency
19 waiver requests, authorized by subdivision (b) of Section
20 2807, on both Prison Industry Authority work programs
21 and inmate contributions to the Victims of Crime
22 Program.

23 (4) An evaluation of administrative planning efforts
24 for adequacy and reasonableness, including whether
25 program goals, objectives, and performance measures
26 have been well defined.

27 (5) An assessment of the effectiveness of
28 administrative efforts to promote employability of
29 inmates upon release, including access to job training,
30 postrelease job placement, and reductions in recidivism.

31 SEC. 9. Nothing in this chapter is intended to result
32 in the displacement of current state employees.

