

AMENDED IN ASSEMBLY JULY 3, 2019

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 555

Introduced by Senator Mitchell

(Coauthors: Assembly Members Medina and Wicks)

February 22, 2019

An act to amend Section 4025 of the Penal Code, and to add Chapter 3.2 (commencing with Section 22120) and Chapter 5 (commencing with Section 22180) to Part 3 of Division 2 of the Public Contract Code, relating to detention facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Mitchell. Jails and juvenile facilities: ~~telephone communications, information, and commissary services:—stores: contracts.~~

(1) Existing law allows the sheriff of each county to operate a store in connection with the county jail to sell confectionary, tobacco, postage and writing materials, and toilet articles to inmates of the jail. Existing law allows the sheriff to fix the sale prices of the articles offered for sale at the store. Existing law requires profits from the store to be deposited in the inmate welfare fund and requires the fund to be used primarily for the benefit, education, and welfare of inmates.

This bill would require the items in the store be offered at the cost paid to the vendor supplying the article. The bill would rename the inmate welfare fund the incarcerated peoples' welfare fund and would require money in the fund to be expended solely for the benefit, education, and welfare of inmates. The bill would require articles offered for sale at the store to only be available for purchase by incarcerated people and not staff of the jail.

(2) Existing law imposes specified procedural and substantive content requirements on contracts entered into by local agencies, including cities and counties.

This bill would require any contract entered into or renewed on or after January 1, 2020, to provide ~~telephone services or other communication~~ *communications or information* services to any person detained or sentenced to a jail or juvenile facility to be negotiated and awarded to an entity that meets the jail or juvenile facility's technical, functional, and security requirements for services, and that provides the lowest cost of service to any person who pays for the ~~telephone service or communication~~ *communications* service. The bill would prohibit any contract to provide ~~telephone services or communication~~ *communications or information* services to any person detained or sentenced to a jail or juvenile facility from including any commission or other payment, as defined, to the entity operating the jail or juvenile facility. The bill would further require that telephone rates and other service rates affected by these provisions be reduced in response to the elimination of commission fees.

(3) *Existing law, the Local Agency Public Construction Act, regulates contracting by counties and cities, among others, and requires a prospective bidder for a contract to submit specified information.*

This bill would require a county sheriff to negotiate and award contracts that provide county jails with communications, information, or commissary services based on providing the best price to the consumer in accordance with specified procedures and requirements. The bill would require a bid for these contracts to include the cost to the consumer. The bill would require a contract for communications, information, or commissary services to include specified provisions, including a provision prohibiting specified fees, a provision relating to renegotiation of the contract by the county sheriff, and provisions relating to consumer refunds. The bill would provide that a contract negotiated under these provisions is not valid until it is found by the county board of supervisors as being in compliance with these requirements. The bill would prohibit the bundling of contracts and would require a separate contract for each distinct good or service provided. The bill would require the sheriff to perform specified testing of the goods and services provided under the contract, and the county board of supervisors to provide a certified copy of each contract to the county controller.

Because this bill would expand the definition of the crime of perjury and would impose additional contracting requirements on local government entities, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*

3 (1) *There is a statewide need to protect incarcerated people*
4 *and their loved ones from predatory practices by private companies*
5 *providing goods and services to people confined in county jails*
6 *throughout the state.*

7 (2) *There is a statewide need to support county sheriffs in*
8 *contracting with private companies who provide communications,*
9 *information, or commissary services to county jails, out of*
10 *recognition that these companies profit from deceptive and*
11 *confusing contracts, and that imbalance often exists in resources*
12 *and expertise in these negotiations that are advantageous to private*
13 *companies.*

14 (3) *The people who suffer the most from these predatory industry*
15 *practices and resulting unfair contracts are people confined in*
16 *county jails, who are generally incarcerated pretrial and should*
17 *be presumed innocent until proven otherwise, and their loved ones.*

18 (4) *The emotional toll and economic burden of having a loved*
19 *one incarcerated is severe, and these individuals are deserving of*
20 *the protection of the state.*

21 (5) *Promoting family and community connection and economic*
22 *stability while a loved one is incarcerated is key to successful*

1 reentry, and it is therefore in the interest of all Californians to
2 reduce the economic burden associated with incarceration in
3 county jails to promote public safety.

4 (b) It is the intent of the Legislature to do the following:

5 (1) End commissions, reduce rates and fees associated with
6 county jail communications, information, or commissary services,
7 and provide guidance and increase the bargaining power of county
8 sheriffs in negotiating contracts with private service providers.

9 (2) Reduce the financial burden on people with incarcerated
10 loved ones in California county jails.

11 (3) Ensure that contracts negotiated by county sheriffs for
12 communications, information, or commissary services are awarded
13 to the provider who offers the lowest cost to consumers for services
14 that meet minimal quality standards.

15 ~~SECTION 1.~~

16 SEC. 2. Section 4025 of the Penal Code is amended to read:

17 4025. (a) The sheriff of each county may establish, maintain
18 and operate a store in connection with the county jail and for this
19 purpose may purchase confectionery, tobacco and tobacco users'
20 supplies, postage and writing materials, and toilet articles and
21 supplies and sell these goods, articles, and supplies for cash to
22 inmates in the jail. Articles offered for sale at the store shall only
23 be available for purchase by incarcerated people and not employees
24 of the jail.

25 (b) The sale prices of the articles offered for sale at the store
26 shall be offered at the cost paid to the vendor supplying the article.

27 (c) There shall also be deposited in the incarcerated peoples'
28 welfare fund 10 percent of all gross sales of inmate hobbycraft.

29 (d) There shall be deposited in the incarcerated peoples' welfare
30 fund any money, refund, rebate, or commission received from a
31 telephone company, pay telephone provider, or other
32 ~~communication~~ *communications or information* service provider
33 when the money, refund, rebate, or commission is attributable to
34 the use of pay telephones and other—~~communication~~
35 *communications or information* services which are primarily used
36 by inmates while incarcerated.

37 (e) The money and property deposited in the incarcerated
38 peoples' welfare fund shall be expended by the sheriff solely for
39 the benefit, education, and welfare of the inmates confined within
40 the jail. Incarcerated peoples' welfare funds shall not be used to

1 pay required county expenses of confining inmates in a local
2 detention system, such as meals, clothing, housing, or medical
3 services or expenses. An itemized report of these expenditures
4 shall be submitted annually to the board of supervisors.

5 (f) The operation of a store within any other county adult
6 detention facility which is not under the jurisdiction of the sheriff
7 shall be governed by this section, except that the board of
8 supervisors shall designate the proper county official to exercise
9 the duties otherwise allocated in this section to the sheriff.

10 (g) The operation of a store within any city adult detention
11 facility shall be governed by this section, except that city officials
12 shall assume the respective duties otherwise outlined in this section
13 for county officials.

14 (h) The treasurer may, pursuant to Article 1 (commencing with
15 Section 53600), or Article 2 (commencing with Section 53630) of
16 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
17 Code, deposit, invest, or reinvest any part of the incarcerated
18 peoples' welfare fund, in excess of that which the treasurer deems
19 necessary for immediate use. The interest or increment accruing
20 on these funds shall be deposited in the incarcerated peoples'
21 welfare fund.

22 (i) The sheriff may expend money from the incarcerated peoples'
23 welfare fund to provide indigent inmates, prior to release from the
24 county jail or any other adult detention facility under the
25 jurisdiction of the sheriff, with essential clothing and transportation
26 expenses within the county or, at the discretion of the sheriff,
27 transportation to the inmate's county of residence, if the county is
28 within the state or within 500 miles from the county of
29 incarceration. This subdivision does not authorize expenditure of
30 money from the incarcerated peoples' welfare fund for the transfer
31 of any inmate to the custody of any other law enforcement official
32 or jurisdiction.

33 ~~SEC. 2.~~

34 *SEC. 3.* Chapter 3.2 (commencing with Section 22120) is added
35 to Part 3 of Division 2 of the Public Contract Code, to read:

1 CHAPTER 3.2. CONTRACTS FOR TELEPHONE SERVICES IN JAILS
2 AND JUVENILE FACILITIES

3
4 22120. (a) Any contract to provide ~~telephone services or any~~
5 ~~communication services using video or other types of electronic~~
6 ~~devices~~ *communications or information services* to a person
7 detained or sentenced to a jail or juvenile facility shall be
8 negotiated and awarded to an entity that meets the jail or juvenile
9 facility's technical, functional, and security requirements for
10 services, and that provides the lowest cost of service to any person
11 who pays for the ~~telephone or communication~~ *communications or*
12 *information* service. A county may require a ~~telephone service~~
13 ~~provider or other communication~~ *communications or information*
14 service provider to cover all costs related to the installation and
15 maintenance of the telephone devices and services.

16 (b) A contract to provide ~~telephone services or other~~
17 ~~communication~~ *communications or information* services to any
18 person detained or sentenced to a jail or juvenile facility shall not
19 include any commission or other payment to the entity operating
20 the jail or juvenile facility.

21 (c) Telephone rates and other service rates shall be reduced in
22 response to the elimination of commission fees.

23 (d) This section applies only to contracts entered into or renewed
24 on or after January 1, 2020.

25 (e) For purposes of this section, the following terms have the
26 following meanings:

27 (1) "Jail" means a county jail, a municipal jail, or a privately
28 operated jail.

29 (2) "Juvenile facility" means any juvenile hall, camp, ranch,
30 or other facility where a person is detained as a result of a petition
31 pursuant to Section 601 or 602 of the Welfare and Institutions
32 Code.

33 (3) "Commission or other payment" means any payments made
34 to provide an incentive for the procurement of contracts, but does
35 not include grants and other payments that do not increase the cost
36 of telephone calls or ~~communication~~ *communications or*
37 *information* services billed to consumers.

38 (4) "*Communications services*" has the same meaning as
39 defined in Section 22181.

1 (5) “Information services” means the offering of a capability
2 for generating, acquiring, storing, transforming, processing,
3 retrieving, using, or making available information via
4 telecommunications, including electronic publishing. “Information
5 services” does not include the management, control, or operation
6 of a telecommunications system or the management of a
7 telecommunications service.

8 SEC. 4. Chapter 5 (commencing with Section 22180) is added
9 to Part 3 of Division 2 of the Public Contract Code, to read:

10
11 CHAPTER 5. COUNTY SHERIFF JAIL CONTRACTS ACT
12

13 22180. This act shall be known, and may be cited, as the County
14 Sheriff Jail Contracts Act.

15 22181. For purposes of this chapter, the following terms have
16 the following meanings:

17 (a) “Commissary services” means any goods sold inside county
18 facilities to people confined therein.

19 (b) “Commissions” means revenue generated from the use of
20 communications, information, and commissary services that is
21 returned to county facilities and placed in the Inmate Welfare
22 Fund.

23 (c) “Communications services” means telephone services,
24 electronic mailing and messaging services, and video visitation
25 services. “Communications services” includes Voice Over Internet
26 Protocol (VoIP) technology, as defined in Section 239 of the Public
27 Utilities Code, and any technology that is developed after the
28 operative date of the act adding this chapter that is made available
29 to incarcerated people and their loved ones to facilitate their
30 communication.

31 (d) “Fees” means an amount of money charged to consumers
32 for the use of communications, information, or commissary
33 services. Fees include hidden or undisclosed fees, including extra
34 fees charged for opening an account, having an account, funding
35 an account, closing an account, getting a refund, or receiving a
36 paper bill.

37 (e) “Information services” has the same meaning as defined in
38 paragraph (5) of subdivision (e) of Section 22120.

39 (f) “Rates” means a predetermined cost for use of
40 communications, information, or commissary services set by the

1 *contracted companies providing services. The rates shall be*
2 *determined by pricing agreements detailed in the contracts with*
3 *sheriffs' departments. A rate for communications services shall*
4 *be calculated on a per minute basis.*

5 22182. (a) *Notwithstanding any other law, a county sheriff*
6 *shall negotiate contracts for communications, information, or*
7 *commissary services based on delivering the best price to the*
8 *consumer, and shall award contracts for communications,*
9 *information, or commissary services to the provider offering the*
10 *best price to the consumer. To comply with this provision, during*
11 *contract negotiations a county sheriff shall do the following:*

12 (1) *Negotiate for low rates.*

13 (2) *Refuse unnecessary extra services in the contract.*

14 (3) *Make their final decision to award a contract based on the*
15 *total cost to the consumer, including fees.*

16 (b) (1) *A county sheriff shall require that the cost to consumers*
17 *who pay for communications, information, or commissary services*
18 *be included in the bid specification.*

19 (2) *A county sheriff may require a bid specification for a*
20 *contract for jail communications, information, or commissary*
21 *services to include prices for services that may be added to, or*
22 *deducted from, the scope of work in the contract for which the bid*
23 *is being submitted.*

24 (c) *A contract for communications, information, or commissary*
25 *services shall not bundle multiple goods and services. Instead, a*
26 *county sheriff shall individually negotiate for every separate and*
27 *distinct good or service.*

28 (d) *A contract for communications, information, or commissary*
29 *services shall include all the following provisions:*

30 (1) *A provision allowing the county sheriff, with the approval*
31 *of the board of supervisors, to renegotiate at any time contracts*
32 *for communications, information, and commissary services*
33 *provided to the county jail.*

34 (2) (A) *A provision prohibiting the following specified fees:*

35 (i) *Fees to be charged for depositing money into incarcerated*
36 *people's trust accounts for commissary services.*

37 (ii) *Fees to open, maintain, fund, or close an account with a*
38 *communications or information service provider.*

39 (iii) *Fees to receive a refund from a communications or*
40 *information service provider.*

1 (iv) Fees to receive a paper bill with communications or
2 information service providers.

3 (v) Fees charged for third-party payments through companies
4 including, but not limited to, Western Union and MoneyGram,
5 consistent with paragraph (6).

6 (B) Subparagraph (A) shall not prevent the charging of
7 reasonable rates for goods or services, as set by law. Subparagraph
8 (A) shall not be construed to prevent sheriffs' departments from
9 disallowing any additional fees charged to consumers for these
10 services, as they deem appropriate.

11 (3) A provision prohibiting communications, information, or
12 commissary service providers from taking funds from consumers'
13 accounts after periods of inactivity. The provision shall require
14 that if the provider violates the provision, then the funds shall be
15 returned to consumers after 90 days of inactivity at no additional
16 cost to the consumers.

17 (4) A provision that requires service providers or county
18 facilities to fully refund individuals for prepaid scheduled
19 appointments that are canceled or disrupted for reasons outside
20 of their control, including, but not limited to, facility cancellation
21 decisions, natural disasters, or other emergencies.

22 (5) A provision that requires individuals to be refunded for any
23 prepaid amount of time that is disrupted or fails to meet the service
24 quality standards included in the contract.

25 (6) A provision that requires service providers to offer multiple
26 options for payment of charges, fees, and trust account deposits.
27 For purposes of this subdivision, "options for payment" include
28 financial services most likely to be used by the families and friends
29 of incarcerated people, including, but not limited to, Western Union
30 and MoneyGram. "Options for payment" shall not be limited to
31 debit, credit, or gift cards and shall include options that do not
32 require access to the internet for online transactions.

33 (7) For contracts in which service providers or facilities permit
34 scheduling service appointments, including video visits, in advance,
35 a provision providing that scheduling mechanisms do not require
36 access to the internet.

37 22183. (a) Every contract awarded under this chapter shall
38 be submitted to the county board of supervisors. That contract
39 shall not be binding on the county until the board of supervisors

1 *finds it to be in accordance with the requirements of this chapter*
2 *and endorses it.*

3 *(b) The county board of supervisors shall file a certified copy*
4 *of each contract endorsed pursuant to subdivision (a) with the*
5 *county controller. A failure to comply with this subdivision does*
6 *not invalidate the contract.*

7 *22184. To ensure accountability for potential predatory*
8 *practices by contracted communications or information service*
9 *providers, a county sheriff shall regularly test communications,*
10 *information, or commissary services awarded under this chapter*
11 *as described below. The county sheriff shall document the test*
12 *results and any subsequent remedial actions taken by sheriffs or*
13 *the service providers, and shall consolidate the information into*
14 *an annual written report to be presented to the board of supervisors*
15 *for review. The report shall be made publicly available with the*
16 *opportunity for 90 days of public comment. The county sheriff shall*
17 *comply with the following steps when conducting trial tests of*
18 *communications or information services:*

19 *(a) Tests shall include trial telephone calls to staff phone*
20 *numbers not already in the provider’s system and shall include*
21 *test deposits made via the mechanisms most likely to be used by*
22 *the families of incarcerated people, including Western Union and*
23 *MoneyGram.*

24 *(b) Tests shall be conducted biannually to monitor how the*
25 *provider is charging and treating consumers. If it is discovered*
26 *that the provider is charging consumers beyond the fees and rates*
27 *disclosed in the contract, the provider is required to refund the*
28 *charges to the affected consumers, pursuant to subdivision (d) of*
29 *Section 22182.*

30 *(c) Tests shall be conducted with the oversight of individuals*
31 *or agencies not immediately associated with the contracts, other*
32 *than the contracted communications or information service*
33 *companies and county facilities. Direct input from individuals who*
34 *have experience utilizing county jail telephone systems both inside*
35 *and outside of county facilities shall be required and documented*
36 *in the written reports presented to the board of supervisors.*

37 *22185. (a) This chapter shall apply to contracts entered into,*
38 *or renewed, on or after the operative date of the act adding this*
39 *section.*

1 (b) Rates shall be reduced in response to reductions in fees and
2 removal of commissions.

3 (c) Companies contracting to provide communications,
4 information, or commissary services pursuant to this chapter shall
5 not increase or charge new fees in response to the reduction in
6 rates in an attempt to make up lost revenue.

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution for certain
9 costs that may be incurred by a local agency or school district
10 because, in that regard, this act creates a new crime or infraction,
11 eliminates a crime or infraction, or changes the penalty for a crime
12 or infraction, within the meaning of Section 17556 of the
13 Government Code, or changes the definition of a crime within the
14 meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 However, if the Commission on State Mandates determines that
17 this act contains other costs mandated by the state, reimbursement
18 to local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.

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23 **REVISIONS:**

24 **Heading—Line 2.**

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