

Date of Hearing: April 27, 2022

**ASSEMBLY COMMITTEE ON APPROPRIATIONS**

Chris Holden, Chair

AB 2526 (Cooper) – As Introduced February 17, 2022

Policy Committee: Public Safety

Vote: 7 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

**SUMMARY:**

This bill requires the electronic transmission of an inmate's mental health records when the inmate is transferred from or between the California Department of Corrections and Rehabilitation (CDCR), the California Department of State Hospitals (DSH) and county jail facilities. Specifically, this bill:

- 1) Provides that mental health records shall be disclosed at the time of transfer or within seven days of the transfer of custody between those facilities.
- 2) Defines "mental health records" to include:
  - a) Clinician assessments, contact notes and progress notes
  - b) Date of mental health treatment and services
  - c) Incident reports
  - d) List of medical conditions and medications
  - e) Psychiatrist assessments, contact notes, and progress notes
  - f) Suicide watch, mental health crisis-or alternative housing placement records.
- 3) Requires the transmission of inmate records comply with existing state and federal medical privacy laws.

**FISCAL EFFECT:**

- 1) Possibly reimbursable costs to counties (General Fund/Local Funds/Proposition 30) in excess of \$150,000 in additional staff workload and possible new information technology (IT) infrastructure across all counties to electronically transmit inmate mental health records to CDCR or DSH within the manner and timeframe specified in this bill. Although most counties have sufficient resources to transmit inmate mental health records to CDCR or DSH, small counties may not have sufficient IT systems to provide records via electronic transmission. Therefore, those counties may require additional resources to facilitate the

scanning and transmission of mental health records. GF costs will depend on whether the Commission on State Mandates determines this bill imposes local reimbursable costs. Pursuant to Proposition 30 (November 2012), any legislation enacted after September 30, 2012, that has an overall effect of increasing costs already borne by a local agency for programs or levels of service mandated by realignment (including management of local jails, child welfare services and foster care) applies to local agencies only to the extent that the state provides annual funding for the cost increase. Proposition 30 has never been litigated and as a result, it is unclear what constitutes a reimbursable state-mandated local program pursuant to Proposition 30.

- 2) Possibly significant cost savings (GF) to CDCR and DSH to the extent this bill reduces staff workload associated with contacting and coordinating the transfer of inmates' mental health records to county agencies, since records would automatically follow an inmate between facilities. Additionally, since this bill requires mental health records follow an inmate between state and county facilities, it reduces the likelihood of unnecessary treatment or duplicate mental health testing because CDCR or DSH do not have the inmate's mental health records.
- 3) Likely minor and absorbable costs to DSH since it currently has processes and infrastructure in place to transmit and receive mental health records.

#### COMMENTS:

- 1) **Purpose.** According to the author:

From a public safety standpoint, it is concerning that mentally disordered offenders who are being evaluated for fitness to be released on parole into the community may not have 12-months of mental health records for review readily available as they are being evaluated as statutorily required; from a continuity of care standpoint, these records should be transferred with physical custody of an inmate; from a cost-savings perspective, this may cut down on duplicative testing and evaluations.

- 2) **Background.** Existing law requires a mentally disordered inmates (i.e., an inmates with a severe mental disorder) to receive mental health evaluations prior to release on parole to determine if the inmate should be referred to DSH. That process includes reviewing the inmate's mental health treatment plan and behavior over the most recent 12-month period. However, not every inmate has been in state custody for 12-months at the time of the required evaluation. As a result, psychologists performing the evaluations do not have the required records and need the records from other facilities where the inmate was prior to CDCR or DSH. This bill seeks to ensure that mental health records of incarcerated persons are available for the purpose of parole evaluations. The MDO Law requires mental health evaluations of certain persons by CDCR psychologists prior to release on parole to aid in determining if they should be released into the community or needs additional treatment from the DSH. Existing law likely already authorizes a county jail facility to transmit an inmate's

mental health records to DSH or CDCR, but it is not clear whether all counties currently do this.

**3) Related Legislation.**

- a) AB 998 (Lackey), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 998 was held in Senate Appropriations Committee.
- b) SB 591 (Galgiani), Chapter 649, Statutes of 2019, requires a practicing psychiatrist or psychologist from DSH or CDCR be afforded prompt and unimpeded access to an inmate temporarily housed at a county jail, when the psychiatrist or psychologist is conducting an evaluation of the inmate as a MDO.

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