

ASSEMBLY THIRD READING
AB 2526 (Cooper)
As Introduced February 17, 2022
Majority vote

SUMMARY

Requires the transfer of mental health records when an inmate is transferred from or between the Department of Corrections and Rehabilitation (CDCR), the State Department of State Hospitals (DSH), and county correctional and medical facilities, as specified.

Major Provisions

- 1) Provides that, when an inmate is transferred from or between the CDCR, DSH, and county correctional and medical facilities, these agencies shall disclose, by electronic transmission when possible, the incarcerated person's mental health records.
- 2) Requires the mental health records to be disclosed at the time of transfer or within seven days of the transfer of custody. If the person is transferred to a state hospital the records shall be provided prior to, or at the time of, transfer.
- 3) Requires the mental health records to be disclosed by and between a county correctional facility, county medical facility, state correctional facility, state hospital, or state-assigned mental health provider to ensure sufficient mental health history is available for the purpose of satisfying the requirements of parole evaluations and to ensure the continuity of mental health treatment of an incarcerated person being transferred between those facilities.
- 4) Provides that "mental health records" include, but are not limited to, the following:
 - a) Clinician assessments, contact notes, and progress notes;
 - b) Date of mental health treatment and services;
 - c) Incident reports;
 - d) List of an inmate's medical conditions and medications;
 - e) Psychiatrist assessments, contact notes, and progress notes; and,
 - f) Suicide watch, mental health crisis, or alternative housing placement records.
- 5) Requires the transmission of mental health records to comply with the Confidentiality of Medical Information Act (CMIA), the Information Practices Act of 1977, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal Health Information Technology for Economic and Clinical Health Act (HITECH), and the corresponding implementing regulations relating to privacy and security.

COMMENTS

According to the Author

"This bill is long-overdue. Over the past number of years, various sentencing reforms and now COVID have changed how much time inmates spend in various facilities before custodial transfers occur. 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."

Arguments in Support

According to the sponsor of this bill, *American Federation of State, County and Municipal Employees (AFSCME)*, *AFL-CIO*, "Assembly Bill 2526 would require the mental health records of inmates transferred between California Department of Corrections and Rehabilitation county facilities be disclosed, by electronic means, when possible, within seven days of the inmate's transfer; for inmates being transferred to the Department of State Hospitals, the mental health records shall be disclosed at the time of transfer or earlier."

"In accordance with Penal Code section 2962, prior to releasing a prisoner on parole, an evaluation of the prisoner must be conducted by specified clinicians. The purpose of this evaluation is to both ensure society is protected from prisoners with dangerous mental disorders and to provide further treatment if it is necessary. Adequate mental health records are necessary to ensure the safety of our communities when prisoners are being released on parole."

"AFSCME is committed to ensuring our evaluators have the tools to conduct full and complete evaluations of the inmate in accordance with Penal Code requirements so they can make fully informed recommendations about if a prisoner can safely be paroled into the community or needs further treatment from the Department of State Hospitals. There are no medical record statutes that apply to correctional settings; this lack of record accessibility creates challenges for the health professionals who are charged with reviewing records prior to parole and evaluating the prisoner."

Arguments in Opposition

None submitted.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES

ASM PUBLIC SAFETY: 7-0-0

YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago, Seyarto

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

UPDATED

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