

Date of Hearing: April 5, 2022

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

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

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. Specifically, **this bill:**

- 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.

EXISTING LAW:

- 1) Provides that, as a condition of parole, an incarcerated person serving a sentence for specified serious and violent offences, who has a severe mental health disorder and meets specified criteria shall be provided necessary treatment by the DSH. (Pen. Code, § 2962.)
- 2) Allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order an inmate to remain in custody for up to 45 days past their scheduled release date for a full Mentally Disordered Offender (MDO) evaluation. (Pen. Code, § 2963.)
- 3) Provides that an incarcerated person who is released on parole or post-release community supervision (PRCS) must be returned to the county that was the last legal residence prior to incarceration, as specified, except as otherwise provided. Provides that an incarcerated person may be returned to another county if that would be in the best interests of the public. (Pen. Code, § 3003, subds. (a)-(c).)
- 4) Specifies the information, if available, that must be released by CDCR to local law enforcement agencies regarding a person placed on parole or PRCS, who is released in their jurisdictions. (Pen. Code, § 3003, subd. (e)(1).)
- 5) States that unless the information is unavailable, CDCR is required to electronically transmit to a county agency, the incarcerated person's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the person transitions onto PRCS, for the purpose of identifying the medical and mental health needs of the individual, as specified. (Pen. Code, § 3003, subd. (e)(2)-(5).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** 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."
- 2) **Need for the Bill:** 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. The MDO law is designed to confine a mentally ill inmate who is about to be released on parole when it is deemed that they have a mental illness which contributed to the commission of a violent crime. (Pen. Code, § 2960.) Rather than release the person to the community, CDCR paroles the person to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period. The MDO law

addresses treatment in three contexts: first, as a condition of parole (Pen. Code, § 2962); then, as continued treatment for one year upon termination of parole (Pen. Code § 2970); and, finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (Pen. Code § 2972). (*People v. Cobb* (2010) 48 Cal.4th 243, 251.)

With respect to evaluations for MDO commitments, existing law requires a practicing psychiatrist or psychologist from DSH, CDCR, or BPH be afforded prompt and unimpeded access to the person and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment. (Pen. Code, § 2962.)

This bill also seeks to provide continuity of care through the disclosure of mental health records of an incarcerated person when jurisdiction is transferred from or between state and county correctional facilities, county medical facilities, and state hospitals, while complying with all federal and state laws regarding confidentiality and security.

The CMIA generally prohibits the sharing of a patient's medical information but allows health care providers, service plans, contractors, or other health care professionals or facilities to disclose medical information for purposes of diagnosis or treatment. (Civ. Code, § 56.10) Additionally, existing law requires CDCR to transmit electronically to a county agency, if the information is available, an incarcerated person's, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the person transitions onto PCRS for the purpose of identifying the medical and mental health needs of the individual. (Pen. Code, § 3003, subd. (e)(2)-(5).)

Thus, under the MDO Law, and the CMIA, the state and local agencies specified in this bill currently have the authority to disclose an incarcerated person's mental health information to each other.

- 3) **Argument 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.”

4) Prior 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.
- c) SB 350 (Galgiani), of the 2017-2018 Legislative Session, would have required the disclosure of medical, dental, and mental health information between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider when an inmate is transferred from or between state and county facilities, as specified. SB 350 was held in the Senate Appropriations Committee.
- d) SB 1443 (Galgiani), of the 2015-2016 Legislative Session, would have permitted the sharing of medical, mental health and dental information between correctional facilities, as specified. SB 1443 was held in the Senate Appropriations Committee.
- e) SB 1295 (Nielsen), Chapter 430, Statutes of 2016, authorized the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the DSH as a MDO.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, Afl-cio
California Association of Psychiatric Technicians
California Medical Association
California State Sheriffs' Association

Opposition

None Submitted.

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