

## ASSEMBLY THIRD READING

AB 998 (Lackey)

As Amended March 30, 2021

Majority vote

**SUMMARY**

Facilitates the sharing of mental health records of a person transferred from or between the Department of Corrections and Rehabilitation, the State Department of State Hospitals, and county agencies.

**Major Provisions**

- 1) Requires a provider of health care, a health care service plan, or a contractor to disclose mental health records, as defined, may be disclosed by a county correctional facility, county medical facility, state correctional facility, or state hospital, as required by the provisions below.
- 2) Establishes that that when jurisdiction of an inmate is transferred from or between the Department of Corrections and Rehabilitation, the State Department of State Hospitals, and county agencies caring for inmates, these agencies shall disclose, by electronic transmission when possible, mental health records for any transferred inmate who received mental health services while in the custody of the transferring facility. Mental health records shall 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 for inmate evaluations prior to the question being before the Board of Parole Hearings and to ensure the continuity of mental health treatment of an inmate being transferred between those facilities.
- 3) Provides that the mental health records shall be disclosed at the time of transfer or within seven days of the transfer of custody between those facilities.

**COMMENTS**

*Need for this Bill:* According to the author, "Existing law (Penal Code 2962) requires mental health evaluations of certain inmates by the California Department of Corrections and Rehabilitation (CDCR) psychologists prior to release on parole to aid in determining if an inmate should be released into the community or needs additional treatment from the Department of State Hospitals (DSH). Among the evaluation requirements is the review of an inmate's treatment and behavior over the most recent 12-month period. At the time of the required evaluation, not all inmates have been in state custody for 12-months so 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.

"State correctional facilities, at times, receive mentally unstable inmates where the inmates' mental health history is not included at the time of transfer to CDCR. Not only does this impact inmate and staff safety, but it is costly as well since many times it may result in duplicate treatment/diagnostic testing by the receiving facility. Although current law offers a variety of statutory schemes discussing the transfer of patient records for the public, none apply in a correctional setting. Having medical records transferred with the inmate will ensure the

evaluators have complete records to comply with the statutory requirements, as well as provide continuity of care for inmates as they are transferred between facilities."

This bill ensures that health providers, and state and local agencies, share relevant documents about a person's mental health, wherever they are in custody.

### **According to the Author**

"Lack of available information should not be a reason for someone to have their mental health put in jeopardy. When health professionals do not have the required information on a patient to provide care, it hurts the patient and wastes time and money spent on another diagnosis. AB 998 will ensure that medical records follow an inmate when transferred, guaranteeing that they can get the care they need."

### **Arguments in Support**

According to the *American Federation of State, County and Municipal Employees (AFSCME)*, "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. The lack of adequate mental health records creates a situation that is not safe for our communities if prisoners are released on parole without proper mental health evaluations.

"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.

"By sponsoring this bill, we are providing our state clinicians the tools they need to conduct a full evaluation prior to parole, ensuring parolees are not a danger to themselves or our communities."

### **Arguments in Opposition**

None.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Possibly reimbursable costs to counties (General Fund (GF)/Local Funds/Proposition 30) in the low hundreds of thousands of dollars in additional staff workload and possible new infrastructure across all counties to electronically transmit inmate mental health records to CDCR or DSH. Smaller counties may not have sufficient information technology to provide mental health records via electronic transmission, so they would require requiring 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) only applies to local agencies to the extent that the state provides annual funding for the cost increase. This bill may have significant costs to local agencies and as a result, may require the state to reimburse counties for the costs of electronically transmitting inmate mental health records. 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 the 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: 8-0-0

**YES:** Jones-Sawyer, Lackey, Bauer-Kahan, Quirk, Santiago, Seyarto, Wicks, Lee

### ASM APPROPRIATIONS: 16-0-0

**YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

## UPDATED

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