
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 870 **Hearing Date:** May 15, 2018
Author: Levine
Version: January 3, 2018
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Prisoners: Mental Health Treatment*

HISTORY

Source: Author

Prior Legislation: AB 154 (Levine), 2017, vetoed
AB 2263 (Levine), 2016, held in Assembly Appropriations
AB 1006 (Levine), 2015, held in Assembly Appropriations
SB 1054 (Steinberg), Ch. 436, Stats. 2014
SB 1323 (Cedillo), 2006, held in Senate Appropriations

Support: California Chronic Care Coalition; National Alliance on Mental Illness – California; National Association of Social Workers, California Chapter

Opposition: California Public Defenders Association

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to require a court to recommend that a defendant sentenced to state prison receive a mental health evaluation, if the court makes specified findings concerning the defendant's mental health.

Existing law states that upon conviction of any felony in which the defendant is sentenced to state prison, and the court makes any of the findings listed below, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a counseling or education program having a substance abuse component while imprisoned:

- That the defendant at the time of the commission of the offense was under the influence of any alcoholic beverages;
- That the defendant at the time of the commission of the offense was under the influence of any alcoholic beverages;
- That the defendant at the time of the commission of the offense was under the influence of any alcoholic beverages; or,

- That the offense or offenses for which the defendant was convicted are drug related. (Pen. Code, § 1203.096.)

This bill requires a court to recommend in writing that a defendant sentenced to state prison receive a mental health evaluation, if the court finds that either of the following is true:

- That the defendant at the time of the commission of the offense was suffering from a serious mental illness; or
- The defendant has a demonstrated history of mental illness.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Jails and prisons have become California's de facto mental health facilities for those who are mentally ill being far more likely to be incarcerated than to be in a psychiatric hospital. Incarcerating those with mental illness does not make sense from an outcomes or a fiscal stand point. Studies have found that individuals who participate in mental health courts reoffend one third of the time than those who do not and that participants show significant improvement in quality of life. Furthermore, mental health courts have been demonstrated to save \$7 in costs for every \$1 spent. It costs \$70,812 a year to house an inmate, and about \$20,412 to house and treat a person with mental illness. AB 870 gives the court the ability to consider the presence of a mental illness in criminal sentencing. (http://www.lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost)

It is estimated that 45% of the state's prison population is living with a mental illness. In the last 15 years the number of people with mental health issues in prison has almost doubled. The Los Angeles County Jail has been called "the largest mental health provider in the country."

Conditions in prison typically exacerbate mental illness. In fact, the courts have found prisons have "failed to deliver necessary care to mentally ill inmates."

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Current law limits a judges sentencing to the statutory time required to serve. While judges can prescribe diversionary programs for substance abuse and make recommendations for treatment for substance abuse, they lack statutory authority to require mental health treatment or supervision.

2. Growing Population of Mentally Ill Inmates

A 2015 Stanford Law School report found that the number of mentally ill people in California's state prisons have almost doubled in the past 15 years. (Mills, Romano and Steinberg, *When did prisons become acceptable mental healthcare facilities?* Stanford Law School Three Strikes Project (Feb. 12, 2015).) The report defines "mentally ill prisoner" as an inmate suffering from a serious mental illness, as diagnosed by the prison Mental Health Delivery System.

According to the report, approximately 45 percent of prison inmates had been treated for severe mental illness the previous year. The report also found that once a mentally ill offender is in the criminal system, they tend to be subjected to harsher sentencing than others for the same crimes: "despite rules of court in California designed to mitigate punishments for mentally ill offenders, the average sentence imposed on defendants suffering from mental illness is longer than the average sentence imposed on defendants who do not have mental health diagnosis but who committed the same crime. Unfortunately this is true across every category of crime in California. For example, the average sentence for burglary imposed on mentally ill defendants is 30 percent longer than the average sentence for non-mentally ill defendants convicted of the same crime." Additionally, "[w]hen it comes time to be considered for release, once again the mentally ill fare miserably. For example, the number of mentally ill prisoners denied relief under new resentencing laws enacted under Proposition 36 is three times greater than the number of non-mentally-ill prisoners who have been denied relief." (*Id.* at 2.)

Once they are released from prison, the report found that mentally ill offenders are not provided with any treatment or services causing them to cycle back through the criminal justice system. "We provide virtually no effective mental health facilities and programs to help released prisoners who are in desperate need of mental health treatment. This service deficit naturally results in higher recidivism rates and an ongoing sense of social isolation and abandonment. And the cycle then begins again with new arrests, new prosecutions, new lengthy sentences, new impediments to release, and eventual release into a system that provides nothing but an inevitable, tragic trajectory back into the criminal justice system." (*Id.* at 3.)

The report made three recommendations: (1) reform the way we sentence the mentally ill; (2) provide meaningful treatment in prison; and continue meaningful treatment after prison. (*Id.* at 3-4.) This bill attempts to address the first two recommendations by requiring a court to recommend that a defendant sentenced to state prison receive a mental health evaluation if certain findings are met.

3. Mental Health Services in Prison

According to a guide on the Department of Corrections and Rehabilitation's (CDCR) Mental Health Services Delivery System:

Any inmate can be referred for mental health services at any time. Inmates who are not identified at Reception or upon arrival at an institution as needing mental health services, may develop such needs later. Any staff members that have concerns about an inmate's mental stability are encouraged to refer that inmate for evaluation by a qualified mental health clinician (psychiatrist, psychologist, or clinical social worker). Under certain circumstances, referral to mental health may be mandatory. A referral to mental health should be made whenever:

- An inmate demonstrates possible symptoms of mental illness or a worsening of symptoms.
- An inmate verbalizes thoughts of suicide or self-harm behavior.
- Upon return from court when an inmate has received bad news such as a new sentence that may extend their time.
- An inmate has been identified as a possible victim per the Prison Rape Elimination Act.
- An inmate demonstrates sexually inappropriate behavior as per the Exhibitionism policy.
- An inmate who is written up for a disciplinary infraction was demonstrating bizarre, unusual, or uncharacteristic behavior when committing the infraction.
- An inmate placed into Administrative Segregation indicates suicidal potential on the prescreening, or rates positive on the mental health screening, or gives staff any reason to be concerned about the inmate's mental stability, such as displaying excessive anxiety.
- Upon arrival to an institution when the inmate indicates prior mental health treatment and medications, especially if not previously documented.

Referrals to mental health may be made on an Emergent, Urgent, or Routine Basis. An inmate deemed to require an Emergent (immediate) referral shall be maintained under continuous staff observation until evaluated by a licensed mental health clinician. An Urgent referral is to be seen within 24 hours. A Routine referral should be seen within five working days.

Referrals are made on the CDCR-MH5, Mental Health Referral Chrono, and forwarded to the mental health office. Emergent and Urgent referrals should also be made by phone to facilitate a timely response. The referral chronos, when received at the mental health office, are logged, entered into the data tracking system, and scheduled for follow-up with the appropriate clinician.

Inmates may also self-refer for a clinical interview to discuss their mental health needs. Inmate self-referrals shall be collected daily from each housing unit, and processed the same way as staff referrals.

(CDCR, Mental Health Services Delivery Services, Program Guide Overview, p. 5 <<https://www.cdcr.ca.gov/DHCS/docs/Mental%20Health%20Program%20Guide.pdf>> [as of May 1, 2018].) This bill requires a court to recommend that a defendant receive a mental health evaluation in prison if certain findings are met, however according to CDCR inmates are already evaluated at Reception for mental health issues.

4. SB 154 Veto Message

This bill is substantially similar to SB 154 (Levine) from 2017. The bill passed through both houses and was vetoed by the current Governor. According to the Governor's veto message:

This bill requires the sentencing court, after making specified findings, to provide a recommendation to the California Department of Corrections and Rehabilitation to conduct a mental health evaluation on a defendant sentenced to state prison.

While I understand the author's intent, the California Department of Corrections and Rehabilitation already conducts mental health evaluations on every defendant sentenced to state prison, regardless of a recommendation from the court.

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