
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 142 **Hearing Date:** April 18, 2017
Author: Beall
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal Offenders: Mental Health*

HISTORY

Source: NAACP Legal Defense Fund

Prior Legislation: SB 678 (Leno), Chapter 608, Stats. 2009

Support: American Civil Liberties Union of California; Anti-Recidivism Coalition; California Catholic Conference; California Attorneys for Criminal Justice; Californians for Safety and Justice; California Attorneys for Criminal Justice; California Public Defenders Association; Courage Campaign; Disability Rights California; Fair Chance Project; National Association of Social Workers, California Chapter; National Union of Healthcare Workers; San Diego County District Attorney; Steinberg Institute

Opposition: None known

PURPOSE

The purpose of this bill is to establish the State Community Mental Health Performance Incentives Fund; and to require courts to consider, if provided by probation, a defendant's mental health history when determining sentencing and whether treatment in the community, including residential treatment, is appropriate in lieu of incarceration.

Existing law provides if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code § 1203, subd. (b)(1).)

Existing law requires the probation officer to immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. (Pen. Code § 1203, subd. (b)(2)(A).)

This bill states that upon the request of the defendant, the probation officer shall include in his or her report whether the defendant is currently, or was at any prior time, eligible for public mental health services due to a serious mental health illness or eligible for Social Security Disability Insurance due to a diagnosed mental illness.

This bill prohibits the use of a finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, and any other record related to a mental disorder in any other civil or administrative proceeding without the defendant's consent.

This bill requires, when a person is convicted of a misdemeanor or felony and the probation report includes information that the defendant suffers from a mental disorder, the court shall consider the defendant's mental health history when determining sentencing and whether treatment in the community, including residential treatment, is appropriate in lieu of incarceration.

Existing law, the California Community Corrections Performance Incentives Act of 2009, establishes a system of performance-based funding to county probation departments when they demonstrate success in reducing the number of adult felony probationers going to state prison because of committing new crimes or violating the terms of probation. (Pen. Code §§ 1228 et seq.)

Existing law authorizes each county to establish the county treasury a Community Corrections Performance Incentives Fund (CCPIF) to receive all amounts allocated to that county from the state. (Pen. Code § 1230.)

Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation (CDCR), the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, to calculate the amount of money to be appropriated from the state fund into a CCPIF. (Pen. Code § 1233.1.)

Existing law specifies that the calculation of funds are based on costs avoided by CDCR because of a reduction in the percentage of adult probationers sent to prison for a probation failure. (*Id.*)

Existing law specifies that the funds provided to each county from the California Community Corrections Performance Incentives Act shall be used for specified purposes relating to supervision and rehabilitative services for adult felony offenders subject to probation and for evidence-based community corrections practices and programs. (Pen. Code § 1230.)

This bill establishes the State Community Mental Health Performance Incentives Fund to transfer funds to counties as mental health incarceration rate reduction incentive payments to be deposited in a Community Mental Health Performance Incentives Fund that each county would be authorized to establish.

This bill specifies that the funds shall be made available to the board of supervisors of that county within 30 days of deposit into the fund and shall be used to implement the community mental health program authorized by the provisions in this bill.

This bill specifies that the mental health program shall be developed and implemented by the board of supervisors and advised by the Community Corrections Partnership and the behavioral health department of that county.

This bill requires the funds allocated to the board of supervisors to be used to provide treatment services for adult offenders subject to local supervision and for those at risk of arrest or incarceration, and to be spent on community-based mental health treatment programs that have been demonstrated by scientific research to reduce recidivism among individuals under local supervision.

This bill requires Judicial Council, in consultation with the chief probation officer and behavioral health department of each county and CDCR, to provide a statistical report to the Department of Finance (DOF), including, but not limited to, the following statistical information for each county:

- The number of felony filings;
- The number of felony convictions;
- The number of felony convictions for which the defendant was sentenced to imprisonment in state prison;
- The number of felony convictions in which the defendant was sentenced to imprisonment in state prison;
- The number of felony convictions in which the defendant was granted probation;
- The adult felon probation population; and,
- The number of adult felony convictions in which the defendant was sentenced to imprisonment in the state prison for a new crime and was placed in the Mental Health Services Delivery System upon entry into the state prison. The calculation shall not include any adult sentenced to state prison for termination of probation, mandatory supervision, or postrelease community supervision.

This bill states that in the first year of implementation, Judicial Council's report shall be submitted quarterly, and thereafter the report shall be submitted biannually.

This bill requires after the conclusion of each calendar year, the Director of Finance, in consultation with CDCR, the Joint Legislative Budget Committee, the Chief Probation Officers of California, the County Behavioral Health Directors Association of California, the California State Association of Counties, and the Judicial Council, to calculate the following for that calendar year:

- The cost to the state to incarcerate in a contract facility and supervise on parole an offender who receives mental health services;
- The total statewide number of CDCR inmates who have received mental health services through the Mental Health Services Delivery System within the past year;
- The total number of CDCR inmates who have received mental health services through the Mental Health Services Delivery System from each county who were not under the supervision of the county probation department at the time of admission;
- An estimate of the number of adults with mental illness each county successfully prevented from being incarcerated in state prison, as specified;
- The state prison mental health incarceration rate for each county, as specified;

- The statewide average for state prison mental health incarceration rates for each county, which shall be calculated as the mean of the mental health incarceration rates as described.

This bill requires, annually, after the conclusion of each calendar year, the Director of Finance, in consultation with CDCR, the Joint Legislative Budget Committee, the County Behavioral Health Directors Association of California, the California State Association of Counties, and the Administrative Office of the Courts, to identify the mental health incarceration rate for each county for which it was estimated that the county successfully prevented any number of adults with mental illness from being sent to state prison.

This bill requires the Director of Finance, in consultation with CDCR, the Joint Legislative Budget Committee, the County Behavioral Health Directors Association of California, and the Administrative Office of the Courts, to annually calculate a mental health incarceration rate reduction incentive payment for each eligible county for the most recently completed calendar year.

This bill specifies that the mental health incarceration rate reduction incentive payment shall equal the estimated number of adults with mental illness successfully prevented from being sent to prison multiplied by 50 percent of the contract facility cost.

This bill provides that if data of sufficient quality and of the types required for the implementation of the provisions in this bill are not available, the Director of Finance, in consultation with CDCR, the Joint Legislative Budget Committee, and the Judicial Council, shall use the best available data to estimate the statewide performance incentive payments utilizing a methodology that is as consistent as is reasonably possible with the provisions in this bill.

This bill states that the mental health incarceration rate reduction incentive payment for any calendar year shall be provided to a county in the following fiscal year with the total annual payment to a county divided into four equal quarterly payments.

This bill requires DOF to include an estimate of the total performance incentive payments to be provided to counties in the coming fiscal year as part of the Governor's proposed budget released no later than January 10 of each year. This estimate shall be adjusted as necessary to reflect the actual calculations of payments completed by DOF, as part of standard budget revision processes in April and May of each year.

This bill establishes in the State Treasury the State Community Mental Health Performance Incentives Fund. Moneys appropriated by the Legislature for purposes of mental health incarceration rate reduction incentive payments shall be transferred into this fund from the General Fund and administered by the Judicial Council.

This bill provides that for each fiscal year, DOF shall determine the total amount of the State Community Mental Health Performance Incentives Fund and the amount to be allocated to each county and shall report those amounts to the Controller. The Controller shall make an allocation from the State Community Mental Health Performance Incentives Fund to each county in accordance with the amounts provided.

This bill specifies that DOF shall increase to no more than \$100,000 the award amount for any county whose mental health incarceration rate reduction incentive payment totals less than \$100,000.

This bill states, for counties that did not receive a mental health incarceration rate reduction incentive payment, DOF shall adjust the award up to \$100,000 per county. A county that receives funds through this provision shall submit a report to Judicial Council and the County Behavioral health Directors Association of California by March 1 annually describing how it plans to use the funds. Failure to report by March 1 will result in that county not receiving funds the subsequent year.

This bill states that a county that fails to provide the necessary information to Judicial Council will not be eligible for payment.

This bill provides that the money appropriated shall be used to supplement, not supplant, any other state or county appropriation for a chief probation officer, probation department, or county department of behavioral health.

COMMENTS

1. Need for This Bill

According to the author:

The number of people with mental illness in prison is on the rise, despite recent reforms to state prison system. Evidence shows that when counties implement effective mental health services, crime goes down, the number of people with mental illness in prison and jail goes down, and money is saved. SB 142 re-invests savings from reduced prison costs into effective community-based mental health services with incentives to create a positive cycle of effective treatment, reduced crime, and new savings for even more services.

SB 142 also requires, at the request of the defendant, inclusion of a defendant's mental health history in the pre-sentencing report. Currently, this information is sometimes included in the report, but there is no statewide uniformity. Having this information will help a judge make a sentencing determination based on a full-picture of the defendant.

SB 142 also requires judges to consider a person's mental health history during sentencing, and whether they can be treated in the community. Data from the California Department of Corrections and Rehabilitation (CDCR) shows that people with mental illness often receive longer sentences for the same crime, despite incarceration being less effective and more expensive than community-based treatment. SB 142 seeks to encourage, at every step of the way, opportunities to treat people with mental illness in community settings reducing costs, improving outcomes and increasing public safety.

2. Growing Population of Mentally Ill Inmates

According to several reports, the population of mentally ill inmates in county jails and in state prisons has increased over the years. A Los Angeles Times article from June 2016 reported that “the number of mentally ill inmates has grown in both county jails and state prisons, although overall inmate populations have shrunk. In L.A. County jails, the average population of mentally ill inmates in 2013 was 3,081. As of mid-May it was 4,139, a 34% increase.

“In the state prison system, the mentally ill inmate population was 32,525 in April 2013, making up 24.5% of the overall population. As of February, according to a recently released monitoring report, the overall population had fallen by 5,230 while the mental health population had grown by 4,275, and made up 29% of the total population.

“A spokesman for the California Department of Corrections and Rehabilitation gave an even higher percentage — 37% — but noted that most of the patients have lower-level conditions that do not require inpatient or enhanced outpatient treatment.” (Sewell, *Mentally ill inmates are swamping the state's prisons and jails. Here's one man's story* (June 19, 2016) Los Angeles Times < <http://www.latimes.com/local/california/la-me-mentally-ill-inmate-snap-story.html>> [as of April 10, 2017].)

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 requires a court to consider a defendant's mental health history when determining sentencing and whether treatment in the community, including residential treatment, is appropriate in lieu of incarceration. This bill also creates funding incentives for counties that place defendants that have mental disorders in community-based treatment rather than sending them to state prison.

3. Incentive-Based Funding

Existing law, enacted by SB 678 (Leno) Chapter 608, Statutes of 2009 provides incentive funding for counties that reduce the number of adult felony probationers that are sent to state prison for committing a new crime or violating the terms of their probation. (Pen. Code §§ 1228 et seq.)

The Judicial Council is required to submit to the Governor and the Legislature an annual report on the implementation of SB 678. According to Judicial Council's most recent report,

When originally passed, the California Community Corrections Performance Incentives Act of 2009 (Sen. Bill 678) was designed to alleviate state prison overcrowding and save state General Fund monies by reducing the number of adult felony probationers who are sent to state prison for committing a new crime or violating the terms of probation, and to meet these objectives without compromising public safety. The Senate Bill 678 program shares state savings from lower prison costs with county probation departments that implement evidence-based supervision practices and achieve a reduction in the number of locally supervised felony offenders who are revoked to state prison. The SB 678 program has been successful in supporting probation departments' increased use of evidence-based practices and lowering the percentage of individuals returned to custody without evident negative impact to public safety. Through the SB 678 performance based funding mechanism county probation departments have received a total of \$708.2 million since program inception, including a \$129.7 million allocation in the Governor's Budget for distribution in fiscal year (FY) 2016-2017.

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Although recent criminal justice initiatives have presented challenges to isolating and identifying the effects of SB 678, in each of the six years since the start of the SB 678 program the state's overall revocation rate has been lower than the original baseline rate of 7.9%. Post enactment of public safety realignment the Judicial Council's Criminal Justice Services office began to collect outcome data on all supervised felony offenders (i.e., felony probation, postrelease community supervision, and mandatory supervision), and the return to prison rate for each felony supervision population has declined from 2013 to 2015. Although distinct trends cannot be established, return rates for felony probationers and individuals on mandatory supervision appear to be similar, whereas individuals on postrelease community supervision are returned to prison at a much higher rate.

Overall the SB 678 program and its performance-based funding mechanism created significant state savings by lowering the number of supervised offenders sent to state prison over the past six years with allocations to county probation departments ranging from \$88.6 million to \$138.3 million per fiscal year. While the number of probationers revoked has decreased since the SB 678 program's inception, California's crime rates remain below the 2008 baseline levels, and there is no evidence to suggest that public safety has been negatively affected by the SB 678 program. Given these positive

outcomes, the state and the counties have an interest in sustaining and expanding upon the effectiveness of the SB 678 program.

(Report on the California Community Corrections Performance Incentives Act of 2009: Findings from the SB 678 Program, Judicial Council of California (July 2016), pp. 1-2.) Several other states have implemented similar probation funding formulas to incentivize counties to reduce the amount of offenders going to state correctional facilities and to get a portion of the savings back. A study found that incentivized probation results in more successful probation outcomes, and saves millions of dollars each year. (Glod, *Incentivizing Results: Lessons from Other States' Probation Funding Formula Reforms and Recommendations to Texas Lawmakers*, Center for Effective Justice (Jan. 2017).)

This bill creates incentive-based funding to counties based on savings at the state level for treating mentally ill offenders in the community rather than through imprisonment in the state prison. This bill requires those funds to be reinvested into community-based mental health treatment programs that have been demonstrated by scientific research to reduce recidivism among individuals under local supervision.

4. Technical Amendment to be Adopted in Committee

This bill will be heard as proposed to be amended to include a technical amendment. Specifically, the bill will be amended to delete the term “suffers from” and replaced with the word “has” when referring to a defendant’s mental disorder.

5. Argument in Support

Disability Rights California writes in support of this bill:

Since 2011, California’s prison system has undergone significant reforms and changes largely in response to federal lawsuits revealing inadequate medical and mental health care in the prison system.

Ironically, people with mental health disabilities have been the least likely to benefit from the reforms – even though the lawsuits were instigated on their behalf and the Supreme Court affirmed their complaints in 2011. The number of people in California state prisons with a mental health disability has increased in the last five years, both in number and proportion, and is expected to continue to increase in coming years.

SB 142 helps to address this issue while also increasing capacity for community-based mental health treatment. The bill incentivizes the placement of defendants with mental health disabilities in community-based treatment, rather than state prison, by sharing the savings from reduced prison admissions with counties to reinvest in community-based treatment. Incarcerating people costs more than twice as much as providing community-based residential treatment, yet community treatment yields better results with reductions in arrests and length of incarceration. This reinvestment will create a positive cycle of increased treatment, reduced crime and more savings for even more services.