
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1703 **Hearing Date:** June 14, 2016
Author: Santiago
Version: January 25, 2016
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Inmates: Medical Treatment*

HISTORY

Source: Los Angeles County Sheriff's Department

Prior Legislation: None known

Support: American Civil Liberties Union; California Peace Officers' Association; California Public Defenders Association; California State Association of Counties; California State Sheriffs' Association; Legal Services with Prisoners with Children; Los Angeles County District Attorney's Office; Orange County Board of Supervisors; Urban Counties of California

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to expand the definition of "immediate medical or hospital care" to include critical specialty medical procedures or treatment, such as dialysis, which cannot be performed at a city or county jail.

Existing law specifies that the court may order the removal of an inmate from a city or county jail to the county hospital or if there is no county hospital in such county, to any hospital designated by such court when the judge finds that a prisoner in any city or county jail requires medical treatment necessitating hospitalization that cannot be provided at the jail. And, existing law requires the sheriff or other official in charge of county correctional facilities to maintain the necessary guards, who may be private security guards, for the safekeeping of a prisoner at an outside medical facility. (Penal Code 4011(a).)

Existing law specifies that the cost of outside medical services will be charged against the county or the city responsible for the jail, and the city or county may recover the costs from the person receiving medical services, or any person or agency responsible for his care and maintenance. (Penal Code § 4011(b).)

Existing law provides that when a prisoner is indigent, the cost of outside medical services will be paid out of the general fund of the city or county. And, under existing law, in the case of city jail prisoners removed to the county hospital, the cost of such hospital care will be paid by the

city to the county, at a rate per day fixed by the board of supervisors of the county to approximate the average actual cost to the county of such hospital care. (Penal Code § 4011(c).)

Existing law provides that a prisoner who is financially able to pay for his medical care, the medical superintendent of such hospital other than a county hospital may, with the approval of a judge, enter into a special agreement with such person, or with his relatives or friends, for his medical expenses. Current law, additionally, states that any prisoner may decline care or treatment and provide other care and treatment for himself at his own expense. (Penal Code § 4011(d).)

Existing law provides that whenever it appears to a sheriff or jailer that a prisoner in a jail under his or her charge is in need of “immediate medical or hospital care,” and that the health and welfare of the prisoner will be injuriously affected unless the prisoner is taken to a hospital, the sheriff or jailer may authorize the immediate removal of the prisoner under guard to a hospital, without first obtaining a court order as specified. (Penal Code § 4011.5.)

Existing law requires the sheriff or jailer to apply to a judge for an order authorizing the continued absence of the prisoner from the jail when the condition of the prisoner prevents his return to the jail within 48-hours from the time of his removal for medical treatment. (Penal Code § 4011.5.)

This bill expands the definition of “immediate medical or hospital care” to include critical specialty medical procedures or treatment, such as dialysis, which cannot be furnished, performed, or supplied at a city or county jail.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed

capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

This is an important bill that seeks to ensure that individuals who are detained in jails are able to access critical specialty medical procedures and treatment without adverse delay and without undue burden to the courts. It will expedite the transport process for these inmates by extending the definition of immediate medical care to include critical specialty medical procedures or treatment such as dialysis, which will result in reducing the burden on the courts and law enforcement for repetitive court orders.

2. Effect of This Bill

According to the Public Policy Institute of California (PPIC), the number of offenders in county jail, as well as the length of their sentences, has increased. Specifically, PPIC states:

Our data indicates that realignment has significantly affected county jail populations. Between June 2011 and June 2012, during which time California's prison population declined by roughly 26,600, the average daily population of California's jails grew by about 8,600 inmates, or about 12 percent. (*Impact of Realignment on County Jail Populations*, PPIC, Magnus Lofstrom and Louis Raphael, 2013, p. 2.)

PPIC's further notes the impact that realignment has had on the number of inmates now serving extended sentences in county jails:

Before realignment, the maximum stay in county jail was one year. Now that lower-level felons go to county jail, this practice has changed—there is no limit on the amount of time these offenders can serve. As of early 2014, county jails housed 1,761 inmates serving sentences of more than five years—up 606 from 2013. (http://www.ppic.org/main/publication_show.asp?i=1061)

According to the author, this has led to an increase in long-term medical issues faced by inmates, as well as an increase in the processes and procedures sheriffs and jailers must undergo to address them. To this end, this legislation would, according to the American Civil Liberties Union of California, who is in support of this legislation, “ease workloads for courts that currently issue separate removal orders for each individual transported from a jail to a necessary medical service, and will simplify the medical transportation process for jail personnel.”

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