



JUDICIAL COUNCIL OF CALIFORNIA

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March 3, 2017

Hon. Lorena Gonzalez Fletcher, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 154 (Levine), as introduced – Fiscal Impact Statement

Dear Assembly Member Gonzalez-Fletcher:

AB 154 provides that a defendant who has pled guilty or nolo contendere to, or was convicted of, a felony or misdemeanor, and who currently is, or at any time prior was, eligible for public mental health services due to serious mental illness or who currently is, or at any prior time was, eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness may petition the court for a sentence that includes mental health treatment. The bill directs that the defendant file the petition after his or her plea or conviction, but before sentencing, and that the defendant bears the burden of establishing by a preponderance of the evidence that he or she meets the above criteria. The bill further provides that if the defendant has met his or her burden, the court may order placement of the defendant as follows: if the defendant agrees, the court may order the defendant to serve all or a portion of her or his sentence in a residential mental health treatment facility instead of state prison or county jail so long as the current plea or conviction is not for a violent felony as defined in Penal Code section 667.5(c) or if the defendant is required by statute to serve his or her entire sentence only in state prison; the court may order the Department of Corrections and Rehabilitation (CDCR) or the county jail authority to place the defendant in a mental health program within the prison or jail at a level of care determined to be

appropriate by the department's mental health staff or county mental health staff; and, the court may order CDCR or the county jail authority to prepare a post-release mental health treatment plan, as specified. AB 154 allows the defendant or prosecutor, at any time, to petition the court to recall and resentence the defendant, as specified, and the defendant shall receive credit for the time served on the prior sentence. Finally, AB 154 specifies that a defendant has a right to counsel for all proceedings under the bill's provisions.

AB 154 could result in significant new unfunded costs to the trial courts in a number of ways. The bill does not require a finding that the defendant's mental illness was a substantial factor that contributed to the defendant's underlying criminal conduct, as was required in earlier legislation introduced by the author (AB 1006 (Levine) of 2015). Rather, this bill requires only that the defendant prove, by a preponderance of the evidence, that he or she is eligible for public mental health services due to serious mental illness, or that he or she currently is, or at any prior time was, eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness. This bill effectively positions courts to direct the mental health placements of defendants. In so doing, there are likely to be significant numbers of hearings to determine the suitability of those initial placements, which may require the testimony of experts. In addition, by allowing defendants and prosecutors to return to the courts "at any time" for a change in the placement order, courts will be forced to exercise continuing jurisdiction in these cases and will likely be subject to multiple post-sentencing hearings for the duration of a defendant's time in custody. Based on our calculations, we estimate a range of costs, from \$4.8 million, to more than \$12.2 million. These calculations, detailed below, include the time required to process defendant petitions for mental health placements and to conduct evidentiary hearings for initial placements, and post-sentencing hearings.

Fiscal Impacts

According to a plain reading of AB 154, any of the projected 35,000-plus¹ felons committed to state prison, or the more than 29,000² felons and misdemeanants serving sentences in local jails at any given time could submit evidence to the court for the purpose of demonstrating that the defendant was eligible for public mental health services due to serious mental illness or that he or she currently is, or at any prior time was, eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness. According to a Bureau of Justice Statistics special report³ published by the US Department of Justice, 56% of inmates in state prisons and 64% of

¹ In 2014–15, which is the most current year for which felon court commitment statistics are available, 35,539 convicted felons were committed to state prison. That number is not projected to change in the coming years. Projections are 35,090 in the current year, and again, to 35,144, in the budget year. See pp. 11-12 of "Spring 2016 Population Projections" of the California Department of Corrections and Rehabilitation, Office of Research.

² Board of State and Community Corrections monthly sentencing data by local facility available at <https://app.bscc.ca.gov/joq/jps/queryselection.asp>. There is an average of 29,552 inmates serving sentences each month in California's jails based on data reported from 2013-2015.

³ Mental Health Problems of Prison and Jail Inmates" by Doris J. James and Lauren E. Glaze (Sept. 2006, NCJ 213600)

inmates in local jails across the country have mental health problems. A 2015 Stanford Law School report⁴ states that mentally ill inmates represent at least 45% of the total California prison population.

Fiscal Analysis

An uncontested evidentiary hearing, or even a stipulated finding for the purposes of determining whether the defendant has established by a preponderance of the evidence that he or she was eligible for public mental health services due to serious mental illness or who currently is, or at any prior time was, eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness would require a minimum of 10 minutes of court time. Court time includes the time of the judicial officer, various court staff, security, operating expenses and equipment. A day of court time is calculated at \$7,010. Some fraction of all of the mentally ill defendants will necessitate sentencing hearings, then, at a minimum cost of \$146 per ten-minute determination. More complicated hearings will require more time for the court to hear and review evidence and make a determination. For purposes of this analysis, we assume that 29,025 defendants may have mental health issues that would qualify under the bill's provisions (45% of total commitments to state both prison and local jail). We further assume that some percentage of these defendants will petition the court for a finding under the terms established in AB 154 for an evidentiary hearing, that we calculate at 10 minutes, in connection with their sentencing. The cost to the courts would range from \$423,692⁵ if 10% of the defendants petition for a placement under the terms of this bill, to \$1,059,376 if 25% the defendants petition the courts for a placement. The costs increase if more than 25% of inmates suffering from mental health issues in California prisons and jails who petition for a finding are granted the hearings to determine whether they have met their burden of establishing mental illness per this section. Costs also increase should the hearings require more than ten minutes of court time.

Another substantial cost would be the courts' handling of the placement orders for the defendants. Although placement hearings are not expressly identified in the bill, AB 154 places courts in the position of directing the placement of a defendant, for which there are likely to be some number of contested hearings to determine the suitability of those initial placements.

⁴ "When did prisons become acceptable mental healthcare facilities?" by Darrell Steinberg, David Mills, and Michael Romano, Stanford Law School Three Strikes Project (pp. 2-3)

⁵ If 45% of defendants committed to state prison and jail annually have some mental illness, that's a population of 29,025 (13,275 of the 29,500 defendants in jail, and 15,750 of the 35,000 defendants sentenced to prison annually). If 10% of those defendants require evidentiary hearings to determine that they were eligible for public mental health services due to serious mental illness or that they currently are, or at any prior time were, eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness, there will be 2,902 hearings. If 25% of the defendants require evidentiary hearings, that is 7,256 hearings. Assuming a 10-minute evidentiary hearing at a cost of \$146 (\$7,010 for a day of court time divided by 8 hours a day = \$876; this hourly cost divided by six for a ten-minute proceeding is \$146. 2,902 hearings x \$146 = \$423,692. 7,256 hearings x \$146 = \$1,059,376. Due to the low threshold for determining a defendant's eligibility for a mental health placement under the statute, there is a reasonable likelihood that a higher number of hearings will be required.

Additionally, there likely will be subsequent placement hearings because defendants and prosecutors are expressly allowed to return to the courts “at any time” for a change in the placement order for the duration of a defendant’s time in custody. A contested hearing for an initial placement is likely to require three hours of court time, and up to six additional hours for the presentation of experts and to determine what suitable placement options best serve the needs of the defendant. Assuming the majority of the initial placement hearings require just a three-hour evidentiary hearing, these hearings could result in significant court costs.⁶ The likely number of contested hearings for initial placements is hard to quantify, so we are providing a range. If 25% of the initial placement hearings are contested, requiring just three hours of court time, the cost burdens on the courts would range from \$1.9 million to \$4.7 million⁷. Costs increase as the placement hearings require more time, or if more than 25% of the initial petitions result in contested hearings.

Historically, courts have not been involved with the ongoing custody of defendants post-sentencing unless there is concern for the deprivation of the defendant’s rights. Under the paradigm created by AB 154, however, and given the concerns for caring for incarcerated people with mental health diagnoses coupled with the limited resources for their care, the universe of defendants likely to avail themselves of repeated petitions to challenge or change their placements is significant, especially given their right to counsel in connection with these proceedings. At an estimated 29,025 defendants with mental health issues in custody, there could be hundreds of post-sentencing petitions filed under the authority created by AB 154 by defendants eager to challenge or change their placements. Even if these post-sentencing hearings last just one hour, the costs to the courts could be significant. 2,902 petitions (representing 10% of the estimated 29,025 defendants with mental health issues) filed in a year would cost the courts \$2.5 million. If 25% of the defendants filed for a post-sentence modification lasting just one hour, the cost to the courts would be \$6.3 million.⁸ These costs will increase should more than 25% of defendants with mental health issues file post-sentence petitions under the authority of AB 154, or should the post-sentence hearings require more than one hour.

Please note that the information contained in this analysis does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the

⁶ There will likely be contested hearings that require significantly greater amounts of court resources, but these tend to be fewer in number. For purposes of this analysis, we have used a three-hour hearing to capture what we estimate to be the majority of cases in determining mental health placements for qualifying defendants.

⁷ At 2,902 petitions (10% of the estimated 29,025 prison and jail inmates with mental health treatment needs), 25% is 725 initial placement hearings. At 7,256 petitions (25% of the estimated inmates with mental health needs), 25% is 1,814 initial placement hearings. The costs are determined by multiplying a three-hour evidentiary hearing at a cost of \$2,628 (\$7,010 for a day in court, divided by 8 and then multiplied by three) by the number of potential hearings. $725 \times \$2,628 = \1.9 million. $1,814 \times \$2,628 = \4.7 million.

⁸ An hour of court time is approximately \$876 (\$7,010 for an eight-hour day $\div 8 = \$876$). $\$876 \times 2,902$ (10% of 29,025) petitions = \$2,542,152. $\$876 \times 7,256$ (25% of 29,025) petitions = \$6,356,256.

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considerations related to the fiscal burdens that are likely to be faced by the branch and branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Sincerely,

Sent by mail March 3, 2017

Cory T. Jasperson,
Director, Governmental Affairs

AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Marc Levine, Member of the Assembly
Mr. Pedro Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Emma Jungwirth, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California