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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2083                      **Hearing Date:** June 28, 2016  
**Author:** Chu  
**Version:** June 14, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** ML

**Subject:** *Interagency Child Death Review*

### HISTORY

**Source:** Santa Clara County Board of Supervisors

**Prior Legislation:** SB 39 (Migden) – Ch. 468, Stats. 2007  
SB 1668 (Bowen) – Ch. 813, Stats. 2006  
SB 1018 (Simitian) – Ch. 140, Stats. 2005  
SB 525 (Polanco) – Ch. 1012, Stats. 1999  
AB 4585 (Polanco) – Ch. 1580, Stats. 1988

**Support:** Board of Behavioral Sciences; County Behavioral Health Directors Association of California; County Health Executives Association of California; Health Officers Association of California; Junior Leagues of California State Public Affairs Committee; Legal Advocates for Children and Youth

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

### PURPOSE

***The purpose of this bill is to allow agencies, at the request of an interagency child death review team, to disclose otherwise confidential information.***

*Existing law* allows counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases, but does not require counties to establish child death review teams. (Penal Code § 11174.32.)

*Existing law* states that interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has expired. (Penal Code § 11174.32(a).)

*Existing law* states that each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child

abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Penal Code § 11174.32(b).)

*Existing law* states that in developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

- a) Experts in the field of forensic pathology;
- b) Pediatricians with expertise in child abuse;
- c) Coroners and medical examiners;
- d) Criminologists;
- e) District attorneys;
- f) Child protective services staff;
- g) Law enforcement personnel;
- h) Representatives of local agencies which are involved with child abuse or neglect reporting;
- i) County health department staff who deals with children's health issues; and
- j) Local professional associations of persons described in paragraphs (1) to (9), inclusive. (Pen. Code, § 11174.32(c).)

*Existing law* clarifies that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Penal Code § 11174.32(d).)

*Existing law* requires each child death review team to make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths. The team is required to withhold the child's last name unless certain exceptions apply. (Penal Code § 11174.32(e).)

*Existing law* defines "local summary criminal history information" as "the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person." (Penal Code § 13300, subd. (a)(1).)

*Existing law* states that "local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency. (Penal Code § 13300, subd. (a)(2).)

*Existing law* requires a local criminal justice agency to furnish local summary criminal history information to any of the following when needed in the course of their duties: the courts,

peace officers, district attorneys, prosecuting city attorneys, probation and parole officers, public defender or attorney of record in a criminal case or in a case involving a certificate of rehabilitation, any city or county district office when needed in fulfilling employment, certification or licensing duties, the subject of the local summary criminal history information; managing or supervising correction officers of a county jail, local child support agencies, county child welfare agencies, humane officers, and other expressly authorized by statute, as specified. (Penal Code § 13300, subd. (b).)

*Existing law* permits a local criminal justice agency to furnish local summary criminal history information to the following, upon a showing of compelling need, to other specified entities, including a public utility which operates a nuclear energy facility, a peace officer from another country, public officers other than peace officers of the United States, a public utility when access is needed to assist in employing person who will be entering private residences. (Penal Code § 13300, subd. (c).)

*Existing law* states that it is not a violation to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed. (Penal Code §§ 13300, subd. (h), and 13305.)

*Existing law* states that an employee of a local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor. (Penal Code § 13302.)

*Existing law* punishes as a misdemeanor any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information. (Penal Code § 13303.)

*Existing law* requires the DOJ to furnish state summary criminal history information to specified entities, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 11105, subd. (b).)

*Existing law* allows the DOJ to furnish state summary criminal history information to specified entities and, when specifically authorized, federal-level criminal history information, upon a showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 11105, subd. (c).)

*Existing law* allows DOJ to charge a fee to reimburse department costs, and a surcharge to fund system maintenance and improvements, whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes. Allows, notwithstanding any other law, any person or entity required to pay a fee to DOJ for information received under this provision to charge the applicant a fee sufficient to reimburse the person or entity for this expense. (Penal Code § 11105, subd. (e).)

*Existing law* authorizes, notwithstanding any other law, a human resource agency or an employer to request from DOJ records of all convictions or any arrest pending adjudication involving the offenses specified of a person who applies for a license, employment, or volunteer position, in

which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. Requires DOJ to furnish the information to the requesting employer and also send a copy of the information to the applicant. (Penal Code § 11105.3, subd. (a).)

*Existing law* punishes as a misdemeanor any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information. (Penal Code § 11142.)

*Existing law* prohibits a provider of health care, health care service plan, or contractor from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided. (Civil Code § 56.10, subd. (a).)

*Existing law* requires a provider of health care, health care service plan, or contractor to disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan if the disclosure is compelled by any of the following:

- a) By a court pursuant to an order of that court;
- b) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority;
- c) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency;
- d) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code;
- e) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel;
- f) By a search warrant lawfully issued to a governmental law enforcement agency;
- g) By the patient or the patient's representative;
- h) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or upon notification of, or investigation of, imminent deaths that may involve organ or tissue donation pursuant to Section 7151.15 of the Health and Safety Code, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation or who is the prospective donor and shall be disclosed to the coroner without delay upon request, or
- i) When otherwise specifically required by law. (Civil Code, § 56.10, subd. (b).)

*Existing law* allows a provider of health care, health care service plan, or contractor to disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan to authorized individuals or entities for research, billing, treatment and other purposes, as specified. (Civil Code § 56.10, subd. (c).)

*Existing law* limits the disclosure of mental health information, as specified. (Welfare & Institutions Code § 5328.)

*Existing law* limits the disclosure of information from child abuse reports and investigations, as specified. (Penal Code § 11167.5.)

*Existing law* limits the disclosure of information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct. (Penal Code § 11163.2.)

*Existing law* limits the disclosure of records of in-home supportive services, as specified. (Welfare & Institutions Code § 10850.)

*Existing law* states that a Health Insurance Portability and Accountability Act of 1996 (HIPPA) covered entity may use or disclose health information as follows:

- a) To the individual for treatment, payment or health care operations;
- b) Incident to a use or disclosure otherwise permitted if it is the minimum necessary to accomplish the purpose of the use or disclosure;
- c) Pursuant to an authorization or agreement by the individual;
- d) Under circumstances set out in the rule for which neither authorization nor agreement is required. (42 U.S.C. §§ 201 et seq.; 45 C.F.R. §§ 164 et seq.)

*Existing law* holds that HIPPA regulations preempt any contrary provision of state law unless the state law provides greater privacy protection for an individual whose health information is protected. (42 U.S.C. §§ 201 et seq.; 45 C.F.R. §§ 160 et seq; See *In re Estate of Broderick* (2005) 125 P.3d 564.)

*This bill* allows, but does not require agencies to disclose, orally or in writing, otherwise confidential information pertaining to the child's death as requested by a child death review team. This bill does not require those agencies to disclose any requested confidential information. The disclosed information may include the following:

- a) Medical information, as provided;
- b) Mental health information, as provided;
- c) Information from child abuse reports and investigations, except the identity of the person making the report which shall not be disclosed;
- d) State summary criminal history information, as defined;
- e) Criminal offender record information, as defined;

- f) Local summary criminal history information, as defined;
- g) Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and
- h) Records of in-home supportive services, unless disclosure is prohibited by federal law.

*This bill* states that agencies and individuals receiving these requests may rely on the request to release the information sought in the request.

#### 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. Stated Need for This Bill

The author states:

Interagency child death review teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases involving the death of a child. Actions by child death review teams may include identification of emerging trends and safety problems to help increase public awareness of risks to children in the community.

AB 2083 amends the statute authorizing use of child death review teams to specifically provide such teams the ability to review mental health information when conducting reviews of suspicious child deaths by adding language modeled after provisions contained in existing statutes applicable to elder and dependent adult and domestic violence death review teams. The ability to share information will help improve the child death review team's investigation and detection of child abuse and neglect as well as help identify trends to reduce the incidents of child death.

### 2. Background

The primary purpose of child death review teams is to prevent future child deaths. At the county level, these teams produce educational materials so that the more common causes of child death can be prevented. In Sacramento County for example, the Sacramento County Child Death Review Team reviews the deaths of every child that dies and subsequently uses the report's findings in order to create various public awareness campaigns. The recommendations have translated to the Shaken Baby Syndrome Prevention Campaign, the Infant Safe Sleep Campaign, and the Drowning Prevention Campaign to reduce preventable deaths.

The statewide child death review council is responsible for collecting data and information from the counties and turning it into reports to the public and legislature. Part of the statutory scheme that created child death review teams included the creation of the Child Death Review Council "to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths." (Penal Code Section 11174.34(a)(1).) The Child Death Review Council is required to "[a]nalyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be

distributed to California Public Officials who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year." (Penal Code Section 11174.34(d)(1).) Therefore, a report analyzing the data collected by each local child death review team is currently a public document. Requiring each local child death review team to also make public its own data appears to be consistent with the overall objectives of the teams (i.e. creating a body of information on the causes of child deaths to help prevent such tragedies). Increased transparency may also enhance the public's trust in local child death review teams.

### **3. Support**

The sponsor of the bill, the Santa Clara County Board of Supervisors, states:

A Child Death Review Team (CDRT) review may include discussion of medical information for the purposes of identifying and reviewing instances of child abuse and neglect, which is permitted under the Health Insurance Portability and Accountability Act (HIPPA). State law, however, provides greater protection to public mental health services and prevents staff from the County's Behavioral Health Department from disclosing information contained in mental health records. While California's other death review statutes related to elder death review teams and domestic violence review teams allow mental health information to be shared, the corresponding child death review statute is silent on this topic.

AB 2083 would revise the authorizing statute for CDRTs to mirror the language in the elder death review team and domestic violence review team statutes to allow CDRTs to discuss mental health information when conducting their review of child abuse and neglect. The ability to discuss mental health information will allow for a complete review, which would help improve CDRT's investigations and help identify trends to reduce the incidents of child death.

-- END --