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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 513                      **Hearing Date:** March 28, 2023  
**Author:** Wiener  
**Version:** February 14, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Incarcerated persons: mental health*

### HISTORY

**Source:** Anti-Recidivism Coalition  
Mental Health America of California

**Prior Legislation:** None

**Support:** CA Youth Empowerment Network; California Association of Mental Health Peer Run Organizations; California Nurses Association; Californians for Safety and Justice; Communities United for Restorative Youth Justice; Disability Rights California; Initiate Justice; Initiate Justice Action; Mental Health America of California; Prosecutors Alliance California; Smart Justice California

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to require the California Department of Corrections and Rehabilitation (CDCR) to conduct mental health treatment for state prison inmates in a manner to accomplish various goals, including providing, to the greatest extent possible, regular and consistent mental health therapy to inmates who seek it, and ensuring that an inmate is provided an introductory mental health therapy appointment within 2 weeks of the inmate requesting care.*

*Existing law* establishes CDCR to administer the state prison system under the direction of the Secretary. (Pen. Code, § 5000 et seq.)

*Existing law* vests the Secretary of the CDCR with the supervision, management and control of state prisons. Provides that the Secretary is also responsible for the care, custody, treatment, training, discipline and employment of a person confined in those prisons. (Pen. Code, § 5054.)

*Existing law* provides that the Secretary may prescribe and amend the rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

*Existing law* defines “medically necessary” as health care services that are determined by the attending or primary medical, mental health, or dental care provider to be needed to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data or clinical evidence as being an effective health care service for the purpose

intended or in the absence of available health outcome data is judged to be necessary and is supported by diagnostic information or specialty consultation. (Cal. Code Regs., tit. 15, § 3999.98.)

*Existing law* defines “mental health evaluation” as a psychological evaluation performed by a mental health clinician that includes a brief narrative of the presenting problem, historical information of relevance, a mental status examination and assessment of level of functioning, determination of need for mental health treatment and recommended level of care, and a referral to a psychiatrist if there is a possible need for psychotropic medication or other psychiatric intervention. (Cal. Code Regs., tit. 15, § 3999.98.)

*Existing law* states that CDCR only provide patients with the health care services that are medically necessary and provides that such services may be subject to approval or disapproval by the licensed medical, mental health, or dental care supervisors. (Cal. Code Regs., tit. 15, § 3999.200.)

*Existing law* provides that CDCR will provide a broad range of mental health services to patients by assessing the needs of its population and developing specialized programs of mental health care, to the extent resources are available for this purpose. Provides that necessary and appropriate mental health services will be provided to patients, and adequate staff and facilities will be maintained for the delivery of such services. (Cal. Code Regs., tit. 15, § 3999.330, subd. (a).)

*Existing law* provides that when a patient is found to require mental health care not available within these resources, but which is available in the Department of State Hospitals, the case will be referred to the Secretary for consideration of temporary transfer to that department pursuant to Penal Code section 2684. (Cal. Code Regs., tit. 15, § 3999.330, subd. (b).)

*Existing law* requires all required mental health treatment or diagnostic services to be provided under the supervision of a psychiatrist licensed to practice in this state, or a psychologist licensed to practice in this state and who holds a doctoral degree and has at least two years of experience in the diagnosis and treatment of emotional and mental disorders. (Cal. Code Regs., tit. 15, § 3999.330, subd. (d).)

*Existing law* provides that records of mental health diagnosis, evaluation, and treatment prepared or maintained by CDCR remain the property of the department and are subject to all applicable laws governing their confidentiality and disclosure. Provides that treatment will be in accord with sound principles of practice and will not serve a punitive purpose. (Cal. Code Regs., tit. 15, § 3999.330, subd. (e).)

*Existing law* requires all persons committed to CDCR to be informed that mental health services are available to them. Requires they are informed that, upon their request, an evaluative interview will be provided within a reasonable period of time by a licensed practitioner, or a specially trained counselor supervised by a licensed practitioner. Provides that, upon request, they will be provided with information as to what specialized treatment programs may be available in the department and how such treatment may be obtained. (Cal. Code Regs., tit. 15, § 3999.330, subd. (f).)

*This bill* requires CDCR to conduct mental health treatment in a manner that accomplishes all of the following goals:

- Provides, to the greatest extent possible, regular and consistent mental health therapy to an inmate who seeks it by, among other things, increasing virtual or in-person therapy opportunities and contracting with mental health providers outside of the department.
- Offers mental health therapy to the greatest extent possible, even if the institution, facility, or section of the state prison is restricting in-person therapy for reasons, including, but not limited to, a security or medical concern.
- Ensures that an inmate is provided an introductory mental health therapy appointment within two weeks of requesting care.
- Is accessible to all inmates regardless of security level, sentence length, or mental health classification.
- Provides, to the greatest extent possible, a private space for an inmate to receive mental health therapy.

*This bill* contains uncodified legislative findings and declarations.

## COMMENTS

### 1. Need For This Bill

According to the author:

Senate Bill 513 provides access to mental health therapy for incarcerated Californians, regardless of security level, sentence length, or mental health classification. Currently, if an incarcerated person in California is not classified to one of four tiers according to CDCR's Mental Health Services Delivery System, they do not have access to mental healthcare at all. If they are classified, they may access mental health therapy in prisons, but sessions are often too short and inconsistent to provide effective relief. SB 513 accomplishes the two-fold goal of improving the existing mental health therapy system in prisons, and expanding access to these services for all incarcerated people. By treating underlying conditions and encouraging reflection and personal growth, SB 513 will also improve California's recidivism rate.

### 2. Mental Health Care in Prisons

In 1990, *Coleman v. Wilson* was filed in federal court challenging the inadequate mental health care provided in the state's prisons and alleging that the civil rights of incarcerated persons were being violated. The federal court found that CDCR was violating the Eighth Amendment by failing to provide constitutionally adequate mental health care to incarcerated individuals with serious mental disorders. The Eighth Amendment violations stemmed in large part from the department's failure to identify with any accuracy the number of mentally ill individuals in the prison population. A special master was appointed to oversee remedial efforts which have continued for nearly three decades. During the early remedial phase, the department developed a screening mechanism to identify mentally ill individuals and plans for a mental health system to deliver mental health care to thousands of incarcerated individuals who had serious mental

disorders. CDCR's Statewide Mental Health Program (SMHP) continues to operate under a court order arising out of *Coleman*.

According to CDCR, the primary function of the SMHP is to ensure that patients have access to mental health services based on their need. The department describes its vision for the program as follows:

- Our services meet or exceed national mental health care standards. We ensure optimal functioning of individuals in our care and promote their successful reintegration into society by using research, evaluation, and assessment to develop and enhance evidence-based treatment strategies. We foster safe and secure environments within the institution and are committed to public safety.
- We are a competent, well-trained staff, who uphold and live our organizational values to promote interdisciplinary cooperation, employee wellness, effective leadership, humane treatment, and a highly productive workforce.
- Self-governance, program and service evaluation, assessments, and continuous self-monitoring are used to ensure quality improvement and system-wide, multilevel information sharing and decision making. Our information technology system is state-of-the-art and staffing and space meet evolving operational requirements.
- We are accredited as an autonomously operating division, cooperating and partnering with external stakeholders to sustain sufficient funding to fulfill our mission and to minimize recidivism by providing continuity of care.  
(<https://www.cdcr.ca.gov/dhcs/mental-health-program/>)

CDCR's Mental Health Services Delivery System (MHSDS) is organized by levels of care. The lowest level of care is the Correctional Clinical Case Management (CCCMS) through which patients are assigned a primary clinician, offered individual therapy at least once every 90 days, undergo psychiatry follow-up every 90 days for medication monitoring, and receive updated treatment planning annually. The next level of care is the Enhanced Outpatient Program (EOP) which is the highest level of outpatient mental health care within MHSDS. The EOP is appropriate for patients whose symptoms impact their ability to function in the general population. Patients are provided with substantially more treatment interventions than CCCMS patients, and the focus is to provide short- to intermediate-term clinical care. The next level of care is the Mental Health Crisis Bed (MHCB) which is an acute level of care that provides short-term treatment for severe episodes of psychiatric distress or mental disorder. More specifically, the MHCB provides care for patients who are a danger to themselves or others, have a serious impairment in taking care of their daily needs, and are in acute psychiatric distress. Finally, the highest level of care is offered through licensed Psychiatric Inpatient Programs (PIPs) which are located within specific prisons throughout the state. PIPs are designed to provide more intensive treatment for patients who cannot function adequately or stabilize in an outpatient program or shorter term inpatient program. In some cases, placement at one of the facilities operated by the Department of State Hospitals may be appropriate.

Notably, CDCR's mental health system is designed to provide treatment to individuals with serious mental health disorders. Department training materials indicate that the core mental disorders treated by the MHSDS are severe mood disorders such as bipolar disorder and major depressive disorder, psychotic disorders such as schizophrenia, and exhibitionistic disorder. (<https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2020/10/Mental-Health-Delivery-System-rem.pdf>) Other disorders treated by the department, such as anxiety, substance use,

personality, and trauma-related disorders, are based on medical necessity, when intervention is necessary to protect life or treat significant disability or dysfunction in patients. (*Id.*)

This bill requires CDCR to conduct mental health treatment in a manner that: provides, to the greatest extent possible, regular and consistent mental health therapy to an incarcerated person who seeks it by increasing virtual or in-person therapy opportunities; offers mental health therapy to the greatest extent possible, even if the institution is restricting in-person therapy for security or medical-related concerns; ensures that an incarcerated person is provided an introductory mental health therapy appointment within two weeks of requesting care; is accessible to all incarcerated individuals regardless of security level, sentence length, or mental health classification; and provides, to the greatest extent possible, a private space for an incarcerated person to receive mental health therapy.

### 3. Argument in Support

Californians for Safety and Justice writes:

This measure will provide access to mental health therapy for incarcerated Californians, regardless of security level, sentence length, or mental health classification. Access to therapy will help to rehabilitate incarcerated people and improve California's recidivism rate.

There are approximately 97,000 people incarcerated in California's prisons. The California Department of Corrections and Rehabilitation (CDCR) currently provides therapy to only the most severe cases of mental illness – those assigned to one of four classifications:

1. Core Clinical Case Management System (Triple-CMS): the lowest classification level. Patients are supposed to receive therapy at least once every 90 days.
2. Enhanced Outpatient Program (EOP): the highest level of outpatient mental care. Patients whose symptoms impact their ability to function and live in separate housing.
3. Mental Health Crisis Bed (MHCB): patients who are in acute psychiatric distress and typically stay for less than 10 days when deemed a danger to themselves or others.
4. Psychiatric Inpatient Programs (PIP): patients who need acute or immediate care and are often experiencing suicidal ideation.

Currently, around 30,000 incarcerated people fall into one of these classifications. Though they technically have access to therapy, their sessions are often as short as 15 minutes, and they are often cycled through different therapists sporadically. These constraints make building a rapport with their therapist and establishing consistency - which are key to the success of any mental health treatment - impossible. The other 67,000 incarcerated Californians who are not classified have no access to any mental health care at all.

Requiring incarcerated people to be classified prior to seeing a mental health therapist poses several problems. According to the National Alliance on Mental Illness (NAMI), about 3 in 5 people (63%) with a history of mental illness do not

receive mental health treatment while incarcerated in state and federal prisons. In 2013, the California Journal of Politics and Policy found that of the majority of incarcerated persons with mental health or substance use issues, less than 10% receive treatment. Often, incarcerated people who would benefit from therapy will deny they have mental health issues, given the stigma surrounding mental health issues in prisons. As a result, they may not feel safe seeking it out.

People with mental health issues are far over-represented in California's prisons, which makes access to consistent mental health therapy even more critical to effectively rehabilitating incarcerated people in California and reducing our recidivism rate. Research has demonstrated that justice-involved people have high levels of trauma and PTSD that lead them to engage in criminogenic behavior as a method of "survival coping." ... [R]esearch n post-traumatic growth indicates that people can heal from trauma. Unfortunately, most incarcerated people do not have access to mental health support to do so.

All people incarcerated in CDCR, regardless of their security level or length of sentence, should have access to this vital form of healthcare without having to be publicly classified as having a serious mental disorder.

**-- END --**