Board of Behavioral Sciences

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: AB 2142 **VERSION:** INTRODUCED FEBRUARY 6, 2024

AUTHOR: HANEY **SPONSORS:**
- CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)
- ANTI-RECIDIVISM COALITION

POLICY & ADVOCACY COMMITTEE RECOMMENDATION: NONE

SUBJECT: PRISONS: MENTAL HEALTH

Summary:

This bill establishes a pilot program for the California Department of Corrections and Rehabilitation at two of its prisons. Under the pilot program, access to mental health therapy would be provided to all incarcerated persons, regardless of whether or not they are classified as having a mental health disorder.

Existing Law:

1) Provides that the following medically or psychologically necessary services may be provided by the Department of Corrections to inmates (Penal Code (PC) §5058.5):
   - Prescreening of mental disorders;
   - Determination of mental competency to participate in classification hearings;
   - Evaluation of parolees during temporary detention; and
   - Determining whether mental health treatment should be a condition of parole.

This Bill:

1) Provides intent language that rehabilitation is an essential function of the Department of Corrections and Rehabilitation (CDCR), and that mental health therapy should be available to all persons incarcerated there without having to be classified as having a mental health disorder, regardless of their security level or length of sentence.

2) Requires CDCR to establish a 3-year pilot program at 2 or more of its institutions (one for each gender) that provides access to mental health therapy to incarcerated

persons either utilizing virtual therapy or utilizing contracted licensed or registered mental health providers. (PC §2693(a))

3) Requires CDCR to offer virtual or in person therapy sessions to each incarcerated person at least twice a month for a minimum of 50 minutes. (PC §2693(b))

4) Specifies that access to these therapy services are for individuals who are currently not already classified by the department in mental health designation statuses that entitle them to treatment. (PC §2693(c))

5) Specifies that enrollment in the program cannot result in an incarcerated person being classified as having a serious mental health disorder unless that person offers their express written permission. (PC §2693(d))

6) Specifies that communications between the incarcerated person and their assigned mental health provider are confidential pursuant to HIPAA. (PC §2693(e))

7) Requires CDCR to provide incarcerated persons with information about community-based treatment programs when they are released. (PC §2693(f))

8) Requires CDCR to report on outcomes of the program to the Legislature at specified times. (PC §2693(g))

Comments:

1) **Author's Intent.** The author is seeking to establish a pilot program to provide access to mental health therapy to all incarcerated persons in CDCR. In their FAQ document for the bill, the sponsors state the following:

"There are approximately 97,000 people incarcerated in California's prisons. The California Department of Corrections and Rehabilitation (CDCR) currently only provides therapy to the most severe cases of mental illness – those assigned to one of four classifications. Approximately 67,000 incarcerated Californians who are not classified are left without access to any mental health care at all, given people with mental health issues are far over-represented in California's prisons. Many people find themselves in criminogenic settings as a result of trauma, post-traumatic stress disorder (PTSD), addiction, and depression that has not been addressed and is exacerbated by their time in prison."

2) **Consider Clarifying Allowable Settings (PC §2693(a)(1) and (2)).** PC section 2693(a) establishes that the pilot program must provide incarcerated persons access to mental health therapy in two types of settings: via virtual therapy, and via contracted licensed or registered mental health providers. Both must be in a confidential setting.

While virtual therapy is a type of setting, it is confusing what type of setting "contracted licensed or registered mental health providers" is. The intent may be to

imply an in-person setting using contracted employees (versus virtual therapy, which might also use contracted employees). The sponsors may wish to consider if this should be clarified.

3) **Policy & Advocacy Committee Recommendation.** The Policy and Advocacy Committee discussed this bill at its April 2024 meeting. It opted not to recommend a position to the Board. It directed staff to seek additional information from the sponsors of the bill about the expected number of mental health providers needed to execute the pilot program, and the impact it might have on the shortage of existing CDCR mental health providers.

   The sponsors have indicated that the two prison facilities covered under the pilot programs house about 4,200 individuals in total. They project about 1,260 of them would utilize the program. They state that they do not intend for the program to exacerbate the existing staff shortages at CDCR, noting that they are specifically targeting the population of incarcerated individuals who are not covered under CDCR's mental health programs. They note the bill promotes the use of telehealth, which will broaden the pool of available providers, as it does not require hiring full time, on-site staff and eliminates the need for travel.

4) **Staff Recommendation.** Staff recommends the Board consider taking a "support" position on this bill.

Support and Opposition.

Support

- California Association of Marriage and Family Therapists (CAMFT) (Sponsor)
- Anti-Recidivism Coalition (Sponsor)
- California Association of Alcohol and Drug Program Executives, INC.
- California Police Chiefs Association
- California Public Defenders Association
- California Youth Empowerment Network
- Initiate Justice
- Mental Health America of California
- National Alliance on Mental Illness – California (NAMI-CA)

Oppose

- Unknown at this time.

History

04/03/24 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 2). Re-referred to Com. on APPR.
02/20/24 Referred to Com. on PUB. S.
02/07/24 From printer. May be heard in committee March 8.
02/06/24 Read first time. To print.

Attachments

Attachment A: Assembly Bill 2142 – Reducing Recidivism Through Therapy Act FAQs

ASSEMBLY BILL No. 2142

Introduced by Assembly Member Haney

February 6, 2024

An act to add Section 2693 to the Penal Code, relating to prisons.

legislative counsel's digest

AB 2142, as introduced, Haney. Prisons: mental health.

Existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to establish and maintain classes for incarcerated persons utilizing institutional personnel or entering into an agreement with the governing board of a school district or private school. Existing law requires the department to develop and implement a plan to obtain additional rehabilitation and treatment services for incarcerated persons and parolees. Existing law requires that plan to include, among other things, filling vacant state staff positions that provide direct and indirect rehabilitation services, or obtaining services from local governments and contractors to assist with treatment for parolees and incarcerated persons.

This bill would require the department to establish a 3-year pilot program at 2 or more institutions that would provide access to specified mental health therapy for those not classified by the department to receive mental health treatment from the institution. The bill would require communications during therapy sessions, as specified, between the incarcerated person and assigned therapist to be confidential. The bill would require the California Correctional Health Care Services to be the custodian of records for treatment records generated under this pilot program. The bill would require the department to report certain

information to the fiscal and appropriate policy committees of the Legislature, from March 1, 2025, to March 1, 2027.

The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Rehabilitation is an essential function of the Department of Corrections and Rehabilitation.

(b) The primary function of the Department of Corrections and Rehabilitation's Statewide Mental Health Program is to ensure patients have ready access to mental health services based on their need.

(c) Mental health therapy contributes to personal growth, reflection, and preparation for safe and successful postincarceration reentry and helps foster a safer environment for staff and people incarcerated in the Department of Corrections and Rehabilitation.

(d) Mental health therapy can be provided by an array of licensed professionals or registered mental health providers, including marriage and family therapists, psychologists, and professional clinical counselors.

(e) To that end, access to mental health therapy should be available to all people incarcerated in the Department of Corrections and Rehabilitation, whatever their security level or length of sentence, without having to be classified as having a mental health disorder.

(f) The department has implemented a successful telepsychiatry program that has improved access to mental health care services and reduced staffing shortages and utilizing these technologies for a broader population will provide for a greater variety of options for incarcerated people to meet with therapists.

SEC. 2. Section 2693 is added to the Penal Code, to read:

2693. (a) In order to foster incarcerated peoples' growth, mental and emotional wellness, and rehabilitation, the Department of Corrections and Rehabilitation shall establish a three-year pilot program at two or more institutions. The pilot program shall include at least one institution housing people of each gender. The

pilot program at each institution shall provide access to mental health therapy to an incarcerated person in either of the following settings:

(1) Virtual therapy opportunities, including telepsychiatry in a confidential setting.

(2) Contracted licensed or registered mental health providers who can provide counseling in a confidential setting.

(b) For each incarcerated person, virtual therapy opportunities or in-person sessions, pursuant to paragraph (2) of subdivision (a), shall be offered at least twice per month, for a minimum of 50 minutes, or as determined by the provider.

(c) Access to services during an incarcerated person's enrollment in the pilot program shall be limited to persons who are not currently determined by the department as having the following classification statuses:

(1) Correctional Clinical Case Management System.

(2) Enhanced Outpatient Program.

(3) Acute levels of care, including the Psychiatric Inpatient Programs or Mental Health Crisis Bed.

(d) Enrollment shall not result in an incarcerated person being classified as having a serious mental health disorder unless the provider has made a formal recommendation and the incarcerated person offers express, written permission.

(e) Communications between an incarcerated person and the assigned mental health provider shall be confidential pursuant to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191). The California Correctional Health Care Services shall act as the custodian of records for all treatment documents generated under this pilot program.

(f) Upon the incarcerated person's release from custody, the department shall provide them with information about community-based treatment programs.

(g) (1) The department shall report to the fiscal and appropriate policy committees of the Legislature on March 1, 2025, and each March 1 thereafter until March 1, 2027. The report shall include all of the following:

(A) The planned capacity of the program at each participating facility.

(B) The number of incarcerated persons enrolled in the program at each participating facility.

(C) The percentage of participants with positive posttreatment outcomes.

(D) The number of persons who are successfully linked to postrelease community-based treatment programs.

(2) (A) The requirement for submitting a report imposed under paragraph (1) shall become inoperative on March 1, 2027.

(B) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(h) For the purposes of this section, "virtual therapy opportunities" means services provided by tablet, video conference, or other technologies.

(i) For the purposes of this section, "positive outcomes" means an inmate exhibiting any of the following:

(1) Reduced disciplinary action or writeups from staff.

(2) Self-acceptance.

(3) Self-understanding.

(4) Improved interpersonal safety and functioning.

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ATTACHMENT A

Assembly Bill 2142 – Reducing Recidivism Through Therapy Act
FAQs

Q: Why is this bill necessary?
A: There are approximately 97,000 people incarcerated in California's prisons. The California Department of Corrections and Rehabilitation (CDCR) currently only provides therapy to the most severe cases of mental illness – those assigned to one of four classifications. Approximately 67,000 incarcerated Californians who are not classified are left without access to any mental health care at all, given people with mental health issues are far over-represented in California's prisons. Many people find themselves in criminogenic settings as a result of trauma, post-traumatic stress disorder (PTSD), addiction, and depression that has not been addressed and is exacerbated by their time in prison.

Q: Is there pending litigation related to this bill?
A: Related, but not directly impacted. *Coleman v. Newsom* is the ongoing class action suit on behalf of all incarcerated people in California state prisons with serious mental illness. The case challenges inadequate mental healthcare systems that place incarcerated people at serious risk of death, injury, and prolonged suffering. (Source). This lawsuit deals directly with staff shortages, creating issues for patients on suicide watch.

This legislation deals strictly with other licensed and trained profession and does not impact those who would otherwise be categorized under CDCR's mental health classifications.

Q: There are currently staffing shortages with mental health support staff in CDCR's facilities. If this bill is passed, how will facilities be able to support the increased number of patients? Will this bill cause a staffing emergency?

A: The shortage of mental health providers requires us to seek out creative solutions so that all incarcerated people have access to mental health services if they feel they need them. During COVID, CDCR worked to build a robust infostructure for telehealth because of the staffing and cost advantages. This bill encourages CDCR to utilize the availability of telehealth to reach outside mental health providers without having to find and hire more full-time staff. In addition, this proposed legislation seeks to utilize additional behavioral health professionals that currently do not provide any services within California's prison system. We are committed to continue working with the Legislature to determine how to make this possible. AB 2142 is just one of many steps to ensure mental healthcare is accessible to all incarcerated Californians.

Q: Why does AB 2142 re-define mental health therapy as 50-minute sessions?
A: According to CDCR, this is already the standard both universally, and in prisons across the state. In practice, CDCR facilities are not currently doing this. AB 2142 simply codifies and reinforces the existing standard CDCR is supposed to be held to.

Q: What are the current numbers for the programs in place?
In-Custody Population by Major Mental Health Designation
As of Month-end December 2022

Correctional Clinical Case Management System (CCCMS)	24,734
Mental Health Crisis Bed (MHCB)	197
Acute Care Facility (ACF)	292
Enhanced Outpatient Program (EOP)	6,776
Intermediate Care Facility (ICF)	841
Other	62,867

"Triple-CMS," or the Correctional Clinical Case Management System is comparable to outpatient care in the community, where patients see their doctor every few months. Otherwise, patients go about their daily lives just as anybody who sees their mental health provider at a clinic or home office.

The next level, the Enhanced Outpatient Program (EOP), can be likened to a day treatment program in the community. These individuals live together in the same housing units at their institutions, where they have a packed schedule of work, program, and recreation together.

The Psychiatric Inpatient Program (PIP) is the next level of care, which provides inpatient programs designed to provide more intensive treatment for patients who cannot function adequately or stabilize in a lower level of care. There are five main "PIPs" in the state, with some flexibility at other institutions.

Patients needing emergency mental health care are assigned to Mental Health Crisis Beds (MHCB), which is a short-term inpatient program, or they may be assigned to the Department of State Hospitals for longer-term care.

Q: How does an incarcerated person's classification under CDCR's Mental Health Services Delivery System impact their potential Board of Parole hearing? How does AB 2142 ease these anxieties for incarcerated people?

A: The Board's policies disadvantage and discriminate against parole applicants with mental health disabilities. The parole board "may" apply risk factors differently in release decisions based on an incarcerated person's mental health status. And often, the Board's decision-making policies weaponize applicants' mental health disabilities to justify withholding, postponing, or denying release. The board has access to a person's mental health classification. Because the prison population has experienced discrimination firsthand, there is a reluctance to seek care. Knowing it could be used as a risk factor to prolong their chance of returning home.

AB 2142 seeks to provide these individuals an opportunity to seek care without classifying them as having a mental illness. Because these individuals would not be classified the board will not have access or knowledge of individuals seeking care under this bill.

Q: How do we know this bill will improve recidivism rates?

A: Prison has the potential to leave a lasting effect on an individual's mental health and subsequently may have post-release consequences for subsequent personal mental health and recidivism.

Incarcerated people are far more likely to have experienced severe childhood trauma, which may result in PTSD, depression, and substance dependence. According to the Journal of Juvenile Justice, justice-involved youth and young adults are thirteen times more likely to have at least one adverse childhood experience (ACE). Research has demonstrated that incarceration often exacerbates the existing traumas that contributed to their incarceration in the first place. Researchers have also established that the effects of trauma may be healed through proper treatment. When trauma is not healed through proper treatment, data suggest that individuals may turn to crime as a way of coping - when strain is chronic, negative emotions such as anger or frustration may develop, leading to a predisposition towards alleviating strain through deviant means. Therapy contributes to personal growth, reflection, and preparation for safe and successful reentry post-incarceration and helps foster a safer environment for both staff and people incarcerated in CDCR facilities. This is why access to consistent mental health therapy is critical to effectively rehabilitating incarcerated people in California and reducing our recidivism rate.