


MEMORANDUM

DATE	April 10, 2017
TO	Board of Psychology
FROM	 Konnor Leitzell Central Services Student Assistant
SUBJECT	Agenda Item #4(b)(1)(B)(33) – SB 142 (Beall) Criminal Offenders: Mental Health.

Background:

This bill would require the courts to consider a defendant's mental health history when determining sentencing and whether treatment in the community, including residential treatment, is appropriate in lieu of incarceration. This bill would also require a probation officer to include whether a defendant is currently, or was at any prior time, eligible for public mental health services due to a serious mental illness in his or her report at the time of judgment for probation.

This bill would also authorize each county to establish a Community Mental Health Performance Incentives Fund to provide treatment services for adult offenders subject to local supervision and for those at risk of arrest or incarceration, and shall be spent on community-based mental health treatment programs that have been demonstrated by scientific research to reduce recidivism among individuals under local supervision.

Location: Senate Committee on Public Safety

Status: 04/06/17 Read second time and amended. Re-referred to Senate Committee on Public Safety

Action Requested:

No action is required at this time. Staff will be watching SB 142 (Beall) to determine its potential to reduce the number of incarcerated individuals suffering from mental illnesses and increase access to mental health services for incarcerated individuals, adult offenders, and individuals at risk of incarceration.

Attachment A: SB 142 (Beall) Text

written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender pursuant to Section 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 33215, a machinegun under Section 32625, or a silencer under Section 33410.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in subdivision (b) or (c) of Section 27590.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) A probationer shall not be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition ~~of~~ of, sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

(l) For any person granted probation prior to January 1, 2021, at the time the court imposes probation, the court may take a waiver from the defendant permitting flash incarceration by the probation officer, pursuant to Section 1203.35.

SEC. 2. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the ~~imposing~~ *imposition* or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following ~~shall~~ *conditions* apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section ~~1202.4 of the Penal Code-~~ *1202.4*.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a court or probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a court or probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the court or probation department total less than fifty dollars (\$50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In ~~counties or cities and counties~~ *a city, county, or city and county* where road camps, farms, or other public work is ~~available~~ *available*, the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the ~~defendant~~ *defendant*, as a condition of ~~probation~~ *probation*, shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent ~~periods~~ *periods*, the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons Control Law, as defined in Section 23500.

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Chapter 1 (commencing with Section 29610) of Division 9 of Title 4 of Part 6 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the ~~above-mentioned~~ terms of imprisonment, fine, and conditions, *as specified in this section*, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the ~~probationer, and that should~~ *probationer*. If the probationer ~~violate~~ *violates* any of the terms or conditions imposed by the court in the matter, ~~it shall have~~ *the court has the* authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section ~~1203.04,~~ *1203.04 of this code*, as operative on or before August 2, 1995, all fines collected by a county

probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(l) If the court orders restitution to be made to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of collection, but not to exceed 15 percent of the total amount ordered to be paid. The amount of the fee shall be set by the board of supervisors if it is collected by the county and the fee collected shall be paid into the general fund of the county treasury for the use and benefit of the county. The amount of the fee shall be set by the court if it is collected by the court and the fee collected shall be paid into the Trial Court Operations Fund or account established by Section 77009 of the Government Code for the use and benefit of the court.

(m) If a person is convicted of a misdemeanor or a felony and the probation report includes any of the circumstances specified in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1203, the court shall consider the defendant's mental health history when determining sentencing and whether treatment in the community, including residential treatment, is appropriate in lieu of incarceration.

SEC. 3. *Chapter 3.5 (commencing with Section 1233.51) is added to Title 8 of Part 2 of the Penal Code, to read:*

CHAPTER 3.5. County Mental Health Incarceration Rate Reduction Incentive Program

1233.51. *(a) Each county is hereby authorized to establish in each county treasury a Community Mental Health Performance Incentives Fund, to receive all amounts allocated to that county for purposes of implementing this chapter.*

(b) Notwithstanding any other law, in any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, shall be made available to the board of supervisors of that county, within 30 days of the deposit of those moneys into the fund, for the implementation of the community mental health program authorized by this chapter.

(1) The community mental health program shall be developed and implemented by the board of supervisors and advised by the Community Corrections Partnership formed pursuant to Section 1230 and the behavioral health department of that county.

(2) Funds allocated to the board of supervisors pursuant to this chapter shall be used to provide treatment services for adult offenders subject to local supervision and for those at risk of arrest or incarceration, and shall be spent on community-based mental health treatment programs that have been demonstrated by scientific research to reduce recidivism among individuals under local supervision.

(3) Each county receiving funds under this chapter shall maintain a complete and accurate accounting of all funds received pursuant to this chapter.

1233.52. *(a) The Judicial Council shall, in consultation with the chief probation officer and behavioral health department of each county and the Department of Corrections and Rehabilitation, provide a statistical report to the Department of Finance, including, but not limited to, the following statistical information for each county:*

(1) The number of felony filings.

(2) The number of felony convictions.

(3) The number of felony convictions in which the defendant was sentenced to imprisonment in the state prison.

(4) The number of felony convictions in each county in which the defendant was sentenced to imprisonment in a county jail pursuant to subdivision (h) of Section 1170.

(5) The number of felony convictions in which the defendant was granted probation.

(6) The adult felon probation population.

(7) The number of adult felony convictions in which the defendant was sentenced to imprisonment in the state prison for a new crime and was placed in the Mental Health Services Delivery System upon entry into the state prison. The calculation shall not include any adult sentenced to state prison for termination of probation, mandatory supervision, or postrelease community supervision.

(b) In the first year of implementation the report required pursuant to subdivision (a) shall be submitted quarterly. After the first year, the report shall be submitted biannually.

1233.53. *After the conclusion of each calendar year, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, the County Behavioral Health Directors Association of California, the California State Association of Counties, and the Judicial Council, shall calculate the following for that calendar year:*

(a) The cost to the state to incarcerate in a contract facility and supervise on parole an offender who receives mental health services.

(b) The total statewide number of inmates in the Department of Corrections and Rehabilitation who have received mental health services through the Mental Health Services Delivery System within the past year.

(c) The total number of inmates described in subdivision (b) from each county who were not under the supervision of the county probation department at the time of admission.

(d) An estimate of the number of adults with mental illness each county successfully prevented from being incarcerated in state prison. For each county, this estimate shall be calculated based on the reduction in the number of inmates described in paragraph (7) of subdivision (a) of Section 1233.52 for that year from the number in the previous year.

(e) The state prison mental health incarceration rate for each county. This rate shall be calculated as the number of individuals described in paragraph (7) of subdivision (a) of Section 1233.52 from each county for that year as a percentage of the individuals described in paragraph (3) of subdivision (a) of Section 1233.52 from each county for that year.

(f) The statewide average for state prison mental health incarceration rates for each county, which shall be calculated as the mean of the mental health incarceration rates described in subdivision (e) of all counties.

1233.54. *(a) Annually, after the conclusion of each calendar year, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the County Behavioral Health Directors Association of California, the California State Association of Counties, and the Administrative Office of the Courts, shall identify the mental health incarceration rate for each county for which it was estimated that the county successfully prevented any number of adults with mental illness from being sent to state prison, as provided in subdivision (d) of Section 1233.53.*

(b) Annually, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the County Behavioral Health Directors Association of California, and the Administrative Office of the Courts, shall calculate a mental health incarceration rate reduction incentive payment for each eligible county for the most recently completed calendar year. The mental health incarceration rate reduction incentive payment shall equal the estimated number of adults with mental illness successfully prevented from being sent to prison, as provided in subdivision (d) of Section 1233.53, multiplied by 50 percent of the contract facility cost, as provided in subdivision (a) of Section 1233.53.

1233.55. *If data of sufficient quality and of the types required for the implementation of this chapter are not available to the Director of Finance, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, and the Judicial Council, shall use the best available data to estimate the statewide performance incentive payments utilizing a methodology that is as consistent with that described in this chapter as is reasonably possible.*

1233.56. *(a) A mental health incarceration rate reduction incentive payment calculated pursuant to subdivision (b) of Section 1233.54 for any calendar year shall be provided to a county in the following fiscal year. The total annual payment to a county shall be divided into four equal quarterly payments.*

(b) The Department of Finance shall include an estimate of the total performance incentive payments to be provided to counties in the coming fiscal year as part of the Governor's proposed budget released no later than January 10 of each year. This estimate shall be adjusted by the Department of Finance, as necessary, to reflect the actual calculations of payments completed by the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the County Behavioral Health Directors Association of California, the California State Association of Counties, and the Judicial Council. This adjustment shall occur as part of standard budget revision processes completed by the Department of Finance in April and May of each year.

(c) There is hereby established, in the State Treasury, the State Community Mental Health Performance Incentives Fund. Moneys appropriated by the Legislature for purposes of mental health incarceration rate

reduction incentive payments authorized pursuant to subdivision (b) of Section 1233.54 shall be transferred into this fund from the General Fund. Any moneys transferred into this fund from the General Fund shall be administered by the Judicial Council, and the share calculated for each county board of supervisors shall be transferred to its Community Mental Health Performance Incentives Fund, authorized in Section 1233.51.

(d) For each fiscal year, the Director of Finance shall determine the total amount of the State Community Mental Health Performance Incentives Fund and the amount to be allocated to each county, pursuant to this section and Section 1233.54, and shall report those amounts to the Controller. The Controller shall make an allocation from the State Community Mental Health Performance Incentives Fund authorized in subdivision (c) to each county in accordance with the amounts provided.

1233.57. *(a) The Department of Finance shall increase to no more than one hundred thousand dollars (\$100,000) the award amount for any county whose mental health incarceration rate reduction incentive payment, as calculated pursuant to subdivision (b) of Section 1233.54, totals less than one hundred thousand dollars (\$100,000).*

(b) The Department of Finance shall adjust the award amount up to one hundred thousand dollars (\$100,000) per county to those counties that did not receive a mental health incarceration rate reduction incentive payment, as calculated pursuant to subdivision (b) of Section 1233.54.

(c) A county receiving funding through subdivision (b) shall submit a report to the Judicial Council and the County Behavioral Health Directors Association of California describing how it plans on using the funds to enhance its ability to be successful under this chapter. Commencing January 1, 2018, a county that fails to submit this report by March 1 annually shall not receive funding pursuant to subdivision (b) in the subsequent fiscal year.

(d) A county that fails to provide the information specified in Section 1233.52 to the Judicial Council shall not be eligible for payment pursuant to this section.

1233.58. *Any moneys appropriated pursuant to this chapter shall be used to supplement, not supplant, any other state or county appropriation for a chief probation officer, probation department, or county department of behavioral health.*

SEC. 4. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*