



JUDICIAL COUNCIL OF CALIFORNIA

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May 11, 2015

Hon. Jimmy Gomez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 1006 (Levine), as amended April 21, 2015 – Fiscal Impact Statement

Dear Assembly Member Gomez:

AB 1006 provides that a defendant who has pled guilty or nolo contendere to, or been convicted of, an offense that will result in a sentence to state prison or county jail, or the prosecutor, may submit evidence after the defendant's plea or conviction, but before her/his sentencing, that the defendant suffers from a diagnosable mental illness that was a substantial factor that contributed to the defendant's criminal conduct. The bill requires the court to consider such evidence in conjunction with the defendant's sentencing. The bill further provides that the court may order placement of the defendant as follows: if the defendant agrees, the court may order the defendant to serve all or a portion of her or his sentence in a residential mental health treatment facility instead of state prison or county jail; the court may order the Department of Corrections and Rehabilitation (CDCR) or the county jail authority to place the defendant in a mental health program within the prison or jail; and, the court may order CDCR or the county jail authority to prepare a post-release mental health treatment plan, as specified. Finally, AB 1006 allows the defendant or prosecutor, at any time, to petition the court for approval to transfer the defendant from a residential mental health treatment facility to a mental health program within the prison or jail. A similar court petition process is provided for cases where the defendant, prosecutor, CDCR, or county jail authority seeks permission to remove the defendant from a mental health

program within the state prison or jail, or dismissal of the requirement that CDCR or the county jail authority prepare a post-release mental health treatment plan.

AB 1006 could result in significant new costs to the trial courts in a number of ways. The current version of AB 1006 eliminated the explicit requirement that the court conduct an evidentiary hearing in all cases following a defendant's submission of evidence, as described above. However, as a practical matter, once a defendant has introduced information about her or his mental state as an explanation for or link to the defendant's actions, the prosecutor may likely resist. That's because if the court finds the requisite level of mental disability, that finding may have a profound impact on the sentence imposed. The evidentiary hearings that would be necessary to support the three-pronged sentencing review described in the bill (ascertain the defendant's claim of diagnosable mental illness; determine that the diagnosable mental illness is substantial; and find a causal link between the substantial mental illness and the defendant's criminal conduct), while not required for every case, are likely to occur in a substantial number of cases involving the more serious crimes. As detailed below, these evidentiary hearings will be costly, possibly involving mental health and criminology experts, potentially consuming anywhere from one to three full court days. Next, by effectively positioning courts to direct the mental health placement of a defendant, there are likely to be hearings to determine the suitability of those initial placements, which also may require the testimony of experts. Finally, by allowing defendants and prosecutors to return to the courts "at any time" for a change in the placement order or discharge plans, courts would be forced to exercise continuing jurisdiction in these cases and be subject to multiple post-sentencing hearings for the duration of a defendant's time in custody. Based on our calculations, we estimate a minimum cost burden to the courts of \$1,629,575.

Fiscal Impacts

According to a plain reading of AB 1006, any of the projected 40,000-plus¹ felons committed to state prison, or the more than 25,000² felons and misdemeanants serving sentences in local jails at any given time could submit evidence to the court to determine if the defendant suffers from a diagnosable mental illness that was a substantial factor that contributed to the defendant's criminal conduct.

According to the Bureau of Justice Statistics, a function of the US Department of Justice, 61% of inmates in state prisons across the country have mental health problems. A 2014 report by

¹ In 2013-14, which is the most current year for which felon court commitment statistics are available, 38,790 convicted felons were committed to state prison. That number is projected to increase to 39,974 in the current year, and again, to 40,798, in the budget year. See pp. 15-16 of "Fall 2014 Population Projections" of the California Department of Corrections and Rehabilitation, Office of Research.

² Board of State and Community Corrections monthly sentencing data by local facility available at <https://app.bscc.ca.gov/joq/jps/queryselection.asp>. There is an average of 24,856 inmates serving sentences each month in California's jails based on data reported from 2012-2014.

Stanford Law School's Three Strikes Project states that mentally ill inmates represent 45% of the total California prison population. A contested evidentiary hearing for the purposes of determining whether the defendant suffers from a diagnosable mental illness, as described above, and should be placed in mental health treatment is estimated to take a minimum of one court day, and may, in some cases, require as many as three days. A day of court time costs an estimated \$4,058 taking into consideration the time of the judicial officer, various court staff, security, operating expenses and equipment. That means that some fraction of the mentally ill defendants will necessitate sentencing hearings at a minimum cost of \$4,058 per hearing, and as much as \$12,174 per hearing. For purposes of this analysis, if we assume that 29,250 defendants may have mental health issues (45% of total commitments to state both prison and local jail) and that just 1% of those defendants require a one-day evidentiary hearing in connection with their sentencing, the cost to the courts would be \$1,184,936³. These costs escalate if more than 1% of the estimated mentally ill prison and jail population requires an evidentiary hearing, or if the evidentiary hearings to determine mental illness and its causal link to the criminal act require more than one day. It is also important to note that some of these cases will likely entail review requiring less than a full day of court resources, although the Judicial Council cannot predict what percentage of cases will result in these hearings, or the amount of court time that will be required.

Another substantial cost to the courts will be the courts' handling of the placement orders for the defendants. The bill places courts in the position of directing the placement of a defendant, for which there are likely to be hearings to determine the suitability of those initial placements, as well as subsequent hearings because defendants and prosecutors are expressly allowed to return to the courts "at any time" for a change in the placement order for the duration of a defendant's time in custody. Courts have historically not been involved post-sentencing with the ongoing custody of defendants unless there is concern for the deprivation of the defendant's rights. The universe of defendants likely to avail themselves of repeated court resources to challenge or change their placements is significant. At an estimated 29,250 defendants with mental health issues in custody, there could be hundreds of post-sentencing petitions filed under the authority created by AB 1006 by defendants eager to challenge or change their placements. Even if these hearings lasted just one hour, 877 petitions (representing just 3% of the estimated 29,250 defendants with mental health issues) filed in a year would cost the courts in excess of \$444,639. If 5% of the defendants filed for a post-sentence modification lasting just one hour, the cost to the courts would be \$741,234.⁴

³ If 45% of defendants committed to state prison and jail annually have some mental illness, that's a population of 29,250 (11,250 of the 25,000 defendants in jail, and 18,000 of the 40,000 defendants sentenced to prison annually). If just 1% of those defendants require evidentiary hearings to determine their mental illness is diagnosable and was a cause of their criminal act, that is at least 292 hearings. Assuming a one-day evidentiary hearing for these defendants, the math is $292 \times \$4058 = \$1,184,936$.

⁴ An hour of court time is approximately \$507 ($\$4,058 \div 8 = \507.25). $\$507 \times 877 \text{ petitions} = \$444,639$. $\$507 \times 1,462 = \$741,234$.

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Please note that the information contained in this request does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the considerations related to the fiscal burdens that would be faced by the branch and branch entities should the bill be enacted into law.

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

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

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cc: Members, Assembly Appropriations Committee
Hon. Marc Levine, Member of the Assembly
Mr. Pedro Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Mr. David Billingsley, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
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Ms. Tiffany Garcia, Budget Analyst, Department of Finance
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