



Contra  
Costa  
County

To: Board of Supervisors  
From: LEGISLATION COMMITTEE  
Date: June 9, 2015

Subject: SB 238 (Mitchell) Foster Care: Psychotropic Medication

### **RECOMMENDATION(S):**

ADOPT a "Support" position on SB 238 (Mitchell), as amended: Foster Care: Psychotropic Medication, a bill that would enable county social workers and other key parties to provide more comprehensive oversight for children receiving child welfare services (CWS) who are prescribed psychotropic medications, as recommended by the Legislation Committee.

### **FISCAL IMPACT:**

Fiscal Impact to State Budget:

- Training development: Potentially significant one-time costs (General Fund) to DSS for the development of the training component for licensed foster parents, group home administrators, relative and nonrelative extended family members, court-appointed counsel, child protective services staff, and mandated reporters.
- Periodic oversight: Annual costs to the courts of \$1.6 million (General Fund\*) for workload associated with document management of monthly reports. Associated costs for county workers are noted under 'Child Welfare Services'. Staff notes costs would be dependent on the meaning of "periodic," which is undefined in the bill but assumed to be specified in the rules of court to be adopted by the Judicial Council.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/09/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I  
Supervisor  
Candace Andersen, District II  
Supervisor  
Mary N. Piepho, District III  
Supervisor  
Karen Mitchoff, District IV  
Supervisor

ABSENT: Federal D. Glover, District V  
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 9, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney,  
925-335-1097

cc:



## FISCAL IMPACT: (CONT'D)

Judicial Council Forms/Updates: One-time costs of \$77,000 (General Fund\*).

- Individualized monthly report: Potentially moderate one-time costs in the low hundreds of thousands of dollars (General Fund) for DSS to develop the monthly report and associated form, to the extent DSS and DHCS are able to utilize preexisting data from their respective databases to develop the report.
- Automatic alert system: Unknown, but potentially major one-time costs potentially in the millions of dollars (General Fund) for DSS to develop or ensure access to a system that automatically alerts social workers when psychotropic medication has been prescribed to youth, subject to specified conditions.
- Child welfare services: Major costs potentially in the tens of millions of dollars (General Fund\*\*) annually for increased costs incurred by county social workers, public health nurses, and other county staff for time to attend additional training, complete more comprehensive court forms, facilitate periodic oversight hearings, respond to automatic alerts, provide notifications, and provide additional follow-up. While the magnitude of workload required to meet the mandates in this bill are unknown at this time, for context, even two additional hours per month of social worker time for the 6,100 youth authorized to receive psychotropic medications would result in costs of over \$10.7 million.
- Proposition 30\*\*: Exempts the State from mandate reimbursement for realigned programs, however, legislation that has an overall effect of increasing the costs already borne by a local agency for realigned programs, including child welfare services, apply to local agencies only to the extent that the State provides annual funding for the cost increase.

\*Trial Court Trust Fund

Source: Senate Appropriations Committee bill analysis

## BACKGROUND:

At its May 7, 2015 meeting, the Legislation Committee considered and accepted the recommendation from the Assistant Director of Policy and Planning for Employment and Human Services Department to recommend a position of "Support" to the Board of Supervisors on SB 238.

Introduced: 02/17/2015

Last Amend: 04/07/2015

Disposition: Pending

Location: Senate Appropriations Committee

Status: 05/28/2015 Hearing n SENATE Committee on APPROPRIATIONS.

## Bill Summary:

SB 238 would require additional training, oversight, and data collection and reporting by specified entities involved in the process of the administration of psychotropic medication in the foster care system. This bill would require the Judicial Council, on or before July 1, 2016, in consultation with various stakeholders, to develop updates to the forms required to implement the bill's provisions, as specified.

### Background:

Existing law provides that only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for a minor who has been adjudged a dependent of the court and removed from the physical custody of his or her parent. Existing law also requires the Judicial Council to adopt rules of court and develop appropriate forms. (Welfare and Institutions Code § 369.5.)

Pursuant to Rule of Court 5.640, the prescribing physician is required to complete and submit an application to the court, known as the "JV-220" form. The JV-220 requires the inclusion of specific information, including: (1) the child's diagnosis; (2) the specific medication with the recommended maximum daily dosage and length of time this course of treatment will continue; (3) the anticipated benefits to the child from the use of the medication; (4) a list of any other medications, prescription or otherwise, that the child is currently taking, and a description of any effect these medications may produce in combination with the psychotropic medication; and (5) a statement that the child has been informed in an age-appropriate manner of the recommended course of treatment, the basis for it, and its possible results. The court is required, upon review of the JV- 220, to deny, grant, or modify the application for authorization of psychotropic medication within seven days, or to set the matter for hearing. The court may also set a date for review of the child's progress and condition.

As noted in the recent analysis of this measure by the Senate Committee on Judiciary (April 28, 2015):

*Governing magazine recently noted that children in the United States are on drugs for longer and more often than kids in any other country. (Chris Kardish, Bad Medicine: How states are overmedicating low-income kids, Governing, March 2015.) Much of the concern stems from the fact that the long-term effects of psychotropic drugs on children are unknown, and the short term effects, including obesity, diabetes, and tremors, can be debilitating. Yet, many medical and child welfare professionals agree that some foster youth may benefit from these medications at some point in their lives. These children, who have suffered abuse and neglect at the hands of family, often have clinically significant emotional or behavioral problems. However, when psychotropic medications are prescribed to a foster child whose parent has been found, at least temporarily, unfit to approve the administration of the drugs, the question arises as to whether the court is capable of making the important inquiries that a parent should make before*

*administering any medication to his or her child. (p.2)*

Proposed Law:

This bill would provide for various reforms to the process of the administration of psychotropic medication in the foster care system by requiring additional training, oversight, and data collection, as specified. This bill would require the Judicial Council, in consultation with various stakeholders, to implement the provisions of this bill. Specifically, this bill:

Requires trainings for the following groups to additionally include the authorization, uses, risks, benefits, administration, oversight, and monitoring of psychotropic medication, and trauma, behavioral health, and other available behavioral health treatments, for children receiving child welfare services, including how to access those treatments:

- o Group home administrator certification;
- o Initial pre-placement training of licensed foster parents;
- o Post-training of licensed foster parents;
- o Training required to be made available to relative and nonrelative extended family members through community college districts;
- o Judicial Council-developed training for dependency judges;
- o Training of court-appointed counsel of a child or nonminor dependent;
- o Training provided to specified county child protective services social workers, agencies under contract with county welfare departments to provide child welfare services, and persons defined as mandated reporters pursuant to the Child Abuse and Neglect Reporting Act.

Requires the Judicial Council, on or before July 1, 2016, in consultation with DSS, the Department of Health Care Services (DHCS), and specified stakeholders to implement and develop updates to the required forms pertaining to this bill.

Requires a process for periodic oversight by the court, that is to be facilitated by the county social worker, public health nurse, or other appropriate county staff, of orders regarding the administration of psychotropic medications that includes the following:

- o The child and his or her caregiver and court-appointed special advocate, if any, have a meaningful opportunity to provide input on the medications being prescribed;
- o Information regarding the child's overall behavioral health assessment and treatment plan is provided to the court;
- o Information regarding the rationale for the proposed medication, including information on other pharmacological and non-pharmacological treatments that have been utilized and the child's response, and an explanation how the psychotropic medication being prescribed is expected to improve the symptoms;

- o Guidance is provided to the court on how to evaluate the request for authorization, including how to proceed if information, otherwise required to be included in a request for authorization, is not included in a request.

Requires DSS, in consultation with DHCS, the County Welfare Directors Association (CWDA) and other stakeholders to develop and provide an individualized monthly report to each county child welfare services agency that includes the following for each child receiving child welfare services:

- o Psychotropic medications that have been authorized for the child by the court;
- o Data for medications that have been dispensed to the child, including both psychotropic and non-psychotropic medication;
- o Durational information relating to the child's authorized psychotropic medication, including, but not limited to, the length of time a medication has been authorized and the length of time for which a medication has been dispensed by a pharmacy;
- o Claims paid for behavioral health services provided to the child, other than claims paid for psychotropic medication; and
- o The dosages of psychotropic medications that have been authorized for the child and that have been dispensed.

Requires DSS, in consultation with DHCS, CDWA and other stakeholders, to develop a form, to be used by a county child welfare services agency on a monthly basis, to share with the juvenile court, the child's attorney, and the court-appointed special advocate, if one has been appointed, the above information regarding a child receiving child welfare services authorized to receive one or more psychotropic medication.

Requires DSS in consultation with DHCS, CWDA, and other stakeholders to develop, or ensure access to, a system that automatically alerts a social worker of a child receiving child welfare services when psychotropic medication has been prescribed that fits the following descriptions:

- o Is prescribed in combination with another psychotropic medication and the combination is unusual or has the potential for a dangerous interaction;
- o Is prescribed in a dosage that is unusual for a child of that age; and
- o Is not typically indicated for a child of that age.

Requires a child's social worker, upon receipt of an alert, to indicate to the court that the alert has been received by the child's attorney, the child's caregiver, and the child's court appointed special advocate, if one has been appointed

#### Related Legislation:

SB 253 (Monning) 2015 provides that an order of the juvenile court authorizing psychotropic medication shall require clear and convincing evidence of specified

conditions. This bill prohibits the authorization of psychotropic medications without a second independent medical opinion under specified circumstances. It also prohibits the authorization of psychotropic medications unless the court is provided documentation that appropriate lab screenings, measurements, or tests have been completed, as specified. This bill is pending hearing in this Committee.

SB 484 (Beall) 2015 requires the CDSS to publish and make available to interested persons specified information regarding the administration of psychotropic medication in residential facilities serving dependent children. Additionally, it requires DSS to inspect facilities at least once per year, as specified, if the facility is determined to have a higher than average rate of psychotropic medication authorization for children residing in the facility and to monitor corrective action plans, as specified. This bill is pending hearing in this Committee.

SB 319 (Beall) 2015 expands the duties of the foster care public health nurse (PHN) to include monitoring and oversight of the administration of psychotropic medication to foster children, as specified. It also requires counties to provide child welfare PHN services by contracting with the community child health and disability prevention program established by the county. This bill is pending hearing in this Committee.

#### Staff Comments:

The Judicial Council has indicated three major costs points associated with the provisions of this bill upon the trial courts and the judicial branch: updating and creating rules of court and forms to update provisions related to the prescription of psychotropic medications (\$77,000 one-time); document management associated with the “sharing” of specified information on a monthly basis regarding an individual child receiving child welfare services (\$1.6 million annually); and training for judicial officers who are authorized to make orders regarding the administration of psychotropic medications for a dependent child or ward who has been removed from the physical custody of his or her parent (\$6,000 one-time for training development).

Staff notes that the mandated periodic oversight process to be facilitated by social workers, public health nurses, or other county staff would also increase trial court workload, the magnitude of which would be dependent on the frequency and duration of the “periodic” oversight prescribed in the adopted rules of court.

This bill imposes new duties on the DSS as detailed above in the “Proposed Law” section of this analysis. The DSS would incur one-time, potentially significant workload for the development of the training component to be completed in consultation with various stakeholders. It is estimated that DSS would incur potentially moderate one-time costs in the low hundreds of thousands of dollars to develop the individualized monthly report and associated form. This estimated cost assumes DSS and DHCS are able to utilize pre-existing data from their respective databases to develop the report. It is estimated that

the one-time cost to DSS to develop, or ensure access to, a system that automatically alerts a social worker of a child receiving child welfare services when psychotropic medication has been prescribed, could be substantial, potentially in excess of several million dollars. There would likely be additional costs for ongoing maintenance and operation of the system.

This bill imposes activities on social workers, public health nurses, and other county staff that could significantly increase the time associated with the provision of child welfare services for this population of youth. Potential workload increases could be incurred by county social workers, public health nurses, and other county staff for various activities, including time to attend additional training, complete more comprehensive court forms, facilitate periodic oversight hearings, respond to automatic alerts, provide notifications, and provide additional follow-up. While the magnitude of workload required to meet the mandates in this bill are unknown at this time, for context, even two additional hours per month of social worker time for the 6,100 youth authorized to receive psychotropic medications would result in costs of over \$10.7 million.

Proposition 30, passed by the voters in November 2012, among other provisions, eliminated any potential mandate funding liability for any new program or higher level of service provided by counties related to realigned programs. Although the provisions of this bill are a mandate on local agencies, any increased costs would not be subject to reimbursement by the state. Rather, Proposition 30 specifies that for legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for realigned programs such as child welfare services, the provisions shall apply to local agencies only to the extent that the state provides annual funding for the cost increase.

While the potential costs of this measure are substantial, the provision of increased system-wide training, monitoring, and oversight over the process of the prescription of psychotropic medications would promote further protection of the health and well-being of youth in the child welfare system, and ultimately result in more positive long-term outcomes for these youth.

#### CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County would not have a position on the bill.

#### ATTACHMENTS

Attachment A - Bill Text

Attachment B - Co-Sponsor Letter from CWDA