

ASSEMBLY BILL

No. 1907

Introduced by Assembly Member Bonnie Lowenthal

February 22, 2012

An act to amend Section 2602 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1907, as introduced, Bonnie Lowenthal. Inmates: psychotropic medication.

Existing law requires that no inmate be administered psychotropic medication on a nonemergency basis without the inmate's informed consent, unless after a noticed hearing is conducted in which an administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best interest.

This bill would extend these requirements to inmates in county jail for felony convictions that are not serious, violent, or sexual offenses. Because this bill would place additional burdens on local governments, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 2602 of the Penal Code is amended to
2 read:

3 2602. (a) Except as provided in subdivision (b), no person
4 sentenced to imprisonment in a state prison *or to imprisonment*
5 *pursuant to subdivision (h) of Section 1170* shall be administered
6 any psychotropic medication without his or her prior informed
7 consent.

8 (b) If a psychiatrist determines that an inmate should be treated
9 with psychotropic medication, but the inmate does not consent,
10 the inmate may be involuntarily treated with the medication.
11 Treatment may be given on either a nonemergency basis as
12 provided in subdivision (c), or on an emergency basis as provided
13 in subdivision (d).

14 (c) The Department of Corrections and Rehabilitation *or sheriff*
15 may seek to initiate involuntary medication on a nonemergency
16 basis only if all of the following conditions have been met:

17 (1) A psychiatrist has determined that the inmate has a serious
18 mental disorder.

19 (2) A psychiatrist has determined that, as a result of that mental
20 disorder, the inmate is gravely disabled or a danger to self or others
21 and does not have the capacity to refuse treatment with
22 psychotropic medications.

23 (3) A psychiatrist has prescribed one or more psychotropic
24 medications for the treatment of the inmate's disorder, has
25 considered the risks, benefits, and treatment alternatives to
26 involuntary medication, and has determined that the treatment
27 alternatives to involuntary medication are unlikely to meet the
28 needs of the patient.

29 (4) The inmate has been advised of the risks and benefits of,
30 and treatment alternatives to, the psychotropic medication and
31 refuses or is unable to consent to the administration of the
32 medication.

33 (5) The inmate is provided a hearing before an administrative
34 law judge.

1 (6) The inmate is provided counsel at least 21 days prior to the
2 hearing. The hearing shall be held not more than 30 days after the
3 filing of the notice with the Office of Administrative Hearings,
4 unless counsel for the inmate agrees to extend the date of the
5 hearing.

6 (7) The inmate and counsel are provided with written notice of
7 the hearing at least 21 days prior to the hearing. The written notice
8 shall do all of the following:

9 (A) Set forth the diagnosis, the factual basis for the diagnosis,
10 the basis upon which psychotropic medication is recommended,
11 the expected benefits of the medication, any potential side effects
12 and risks to the inmate from the medication, and any alternatives
13 to treatment with the medication.

14 (B) Advise the inmate of the right to be present at the hearing,
15 the right to be represented by counsel at all stages of the
16 proceedings, the right to present evidence, and the right to
17 cross-examine witnesses. Counsel for the inmate shall have access
18 to all medical records and files of the inmate, but shall not have
19 access to the confidential section of the inmate's central file which
20 contains materials unrelated to medical treatment.

21 (C) Inform the prisoner of his or her right to contest the finding
22 of an administrative law judge authorizing treatment with
23 involuntary medication by filing a petition for writ of
24 administrative mandamus pursuant to Section 1094.5 of the Code
25 of Civil Procedure, and his or her right to file a petition for writ
26 of habeas corpus with respect to any decision of the Department
27 of Corrections and Rehabilitation *or sheriff* to continue treatment
28 with involuntary medication after the administrative law judge has
29 authorized treatment with involuntary medication.

30 (8) An administrative law judge determines by clear and
31 convincing evidence that the inmate has a mental illness or
32 disorder, that as a result of that illness the inmate is gravely
33 disabled and lacks the capacity to consent to or refuse treatment
34 with psychotropic medications or is a danger to self or others if
35 not medicated, that there is no less intrusive alternative to
36 involuntary medication, and that the medication is in the inmate's
37 best medical interest.

38 (9) The historical course of the inmate's mental disorder, as
39 determined by available relevant information about the course of
40 the inmate's mental disorder, shall be considered when it has direct

1 bearing on the determination of whether the inmate is a danger to
2 self or others, or is gravely disabled and incompetent to refuse
3 medication as the result of a mental disorder.

4 (10) An inmate is entitled to file one motion for reconsideration
5 following a determination that he or she may receive involuntary
6 medication, and may seek a hearing to present new evidence, upon
7 good cause shown.

8 (d) Nothing in this section is intended to prohibit a physician
9 from taking appropriate action in an emergency. An emergency
10 exists when there is a sudden and marked change in an inmate's
11 mental condition so that action is immediately necessary for the
12 preservation of life or the prevention of serious bodily harm to the
13 inmate or others, and it is impractical, due to the seriousness of
14 the emergency, to first obtain informed consent. If psychotropic
15 medication is administered during an emergency, the medication
16 shall only be that which is required to treat the emergency condition
17 and shall be administered for only so long as the emergency
18 continues to exist, but in no event longer than five days after the
19 written notice and counsel are provided pursuant to subdivision
20 (c), unless the department *or sheriff* first obtains an order from an
21 administrative law judge authorizing the continuance of medication
22 beyond five days. The order may be issued *ex parte* upon a showing
23 that in the absence of the medication the emergency is likely to
24 recur. The request for an order shall be supported by an affidavit
25 showing specific facts. The inmate may present facts supported
26 by an affidavit in opposition to the request. If an order is issued,
27 the psychiatrist may continue the administration of the medication
28 until the hearing described in paragraph (5) of subdivision (c) is
29 held.

30 (1) The Department of Corrections and Rehabilitation *or sheriff*
31 shall file with the Office of Administrative Hearings, and serve
32 on the inmate and his or her counsel the written notice described
33 in paragraph (7) of subdivision (c) within 72 hours of commencing
34 medication pursuant to this subdivision, unless either of the
35 following occurs:

36 (A) The inmate gives informed consent to continue the
37 medication.

38 (B) A psychiatrist determines that the psychotropic medication
39 is not necessary and administration of the medication is
40 discontinued.

1 (2) If medication is being administered pursuant to this
2 subdivision, the hearing described in paragraph (5) of subdivision
3 (c) shall commence within 21 days of the filing and service of the
4 notice, unless counsel for an inmate agrees to a longer period of
5 time.

6 (3) With the exception of the timeline provisions specified in
7 paragraphs (1) and (2) of subdivision (d) for providing notice and
8 commencement of the hearing in emergency situations, the inmate
9 shall be entitled to and be given the same due process protections
10 as specified in subdivision (c). The department *or sheriff* shall
11 prove the same elements supporting the involuntary administration
12 of psychotropic medication and the administrative law judge shall
13 be required to make the same findings described in subdivision
14 (c).

15 (e) The determination that an inmate may receive involuntary
16 medication shall be valid for one year from the date of the
17 determination, regardless of whether the inmate subsequently gives
18 his or her informed consent.

19 (f) If a determination has been made to involuntarily medicate
20 an inmate pursuant to subdivision (c) or (d), the medication shall
21 be discontinued one year after the date of that determination, unless
22 the inmate gives his or her informed consent to the administration
23 of the medication, or unless a new determination is made pursuant
24 to the procedures set forth in subdivision (g).

25 (g) To renew an existing order allowing involuntary medication,
26 the department *or sheriff* shall file with the Office of Administrative
27 Hearings, and shall serve on the inmate and his or her counsel, the
28 written notice described in paragraph (7) of subdivision (c). The
29 notice shall specify that the request is for a renewal.

30 (1) The request to renew the order shall be filed and served no
31 later than 21 days prior to the expiration of the current order
32 authorizing involuntary medication.

33 (2) To obtain a renewal order, the department *or sheriff* shall
34 provide the same due process protections as specified in
35 subdivision (c). The department *or sheriff* shall prove the same
36 elements supporting the involuntary administration of psychotropic
37 medication and the administrative law judge shall be required to
38 make the same findings described in subdivision (c).

39 (3) Renewal orders shall be valid for one year from the date of
40 the hearing.

1 (4) An order renewing a prior order may be granted based on
2 clear and convincing evidence that, but for the medication, the
3 inmate would revert to the behavior that was the basis for the prior
4 order authorizing involuntary medication, coupled with evidence
5 that the inmate lacks insight regarding his or her need for the
6 medication, such that it is unlikely that the inmate would be able
7 to manage his or her own medication and treatment regimen. No
8 new acts need be alleged or proven.

9 (5) The hearing on any petition to renew an order for involuntary
10 medication shall be conducted prior to the expiration of the current
11 order.

12 (h) In the event of a conflict between the provisions of this
13 section and the Administrative Procedure Act (Chapter 4.5
14 (commencing with Section 11400) of Part 1 of Division 3 of the
15 Government Code), this section shall control.

16 SEC. 2. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.