

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1065

Introduced by Assembly Member Holden

February 22, 2013

An act to amend ~~Sections 3000.08 and 3451~~ *Section 2966* of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 1065, as amended, Holden. Parole.

Existing law requires a prisoner who has a severe mental disorder to be treated by the State Department of State Hospitals as a condition of parole. Existing law specifies the criteria for this parole condition to apply, and allows a prisoner to request a hearing before the Board of Parole Hearings for the purpose of proving that the prisoner meets the criteria. Existing law allows a prisoner who disagrees with the determination of the Board of Parole Hearings to file a petition in court for a hearing on whether he or she met the criteria. Existing law provides that if the determination of the Board of Parole Hearings is reversed, the court is to stay the execution of the decision for 5 working days to allow for an orderly release of the prisoner.

Existing law requires that ~~all specified~~ persons released from prison on and after October 1, 2011, after serving a prison term for a felony, be subject to postrelease community supervision provided by a county agency for a period of 3 years immediately following release, ~~except for persons released after serving a term for a serious felony, a violent felony, an offense for which the person was sentenced pursuant to the 3 strikes law, a crime where the person is classified as a High Risk Sex Offender, or a crime where the person is required to undergo treatment~~

~~by the State Department of State Hospitals because the person has a severe mental disorder. Existing law requires these persons to be subject to parole supervision by the Department of Corrections and Rehabilitation following release from state prison. Existing law requires the Department of Corrections and Rehabilitation to notify a county of specified information about a person subject to postrelease community supervision by a county 30 days prior to the release of that person.~~

This bill would instead provide that if the determination of the Board of Parole Hearings is reversed, the court shall stay the execution of the decision for 30 working days to allow for an orderly release of the prisoner.

This

The bill would require that a person released from state prison who has served a previous prison term for which he or she was required, as a condition of parole, to undergo treatment by the State Department of State Hospitals to be subject to parole supervision by the Department of Corrections and Rehabilitation and the court in the county in which the parolee is released. if the determination of the Board of Parole Hearings is reversed, the Department of Corrections and Rehabilitation, upon a determination that the individual is eligible for release pursuant to postrelease community supervision provisions, is to notify the probation department of the county of supervision of the pending release within 5 working days of the court order and work with the county of supervision to coordinate the orderly and safe release of the prisoner.

The bill would also make technical, nonsubstantive changes to these provisions.

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

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

- 1 **SECTION 1.** *Section 2966 of the Penal Code is amended to*
- 2 *read:*
- 3 2966. (a) A prisoner may request a hearing before the Board
- 4 of ~~Prison Terms~~ *Parole Hearings*, and the board shall conduct a
- 5 hearing if so requested, for the purpose of ~~proving that~~ *determining*
- 6 *whether* the prisoner meets the criteria in Section 2962. At the
- 7 hearing, the burden of proof shall be on the person or agency who
- 8 certified the prisoner under subdivision (d) of Section 2962. If the

1 prisoner or any person appearing on his or her behalf at the hearing
2 requests it, the board shall appoint two independent professionals
3 as provided for in Section 2978. The prisoner shall be informed
4 at the hearing of his or her right to request a trial pursuant to
5 subdivision (b). The Board of ~~Prison Terms~~ *Parole Hearings* shall
6 provide a prisoner who requests a trial, a petition form and
7 instructions for filing the petition.

8 (b) A prisoner who disagrees with the determination of the
9 Board of ~~Prison Terms~~ *Parole Hearings* that he or she meets the
10 criteria of Section 2962, may file in the superior court of the county
11 in which he or she is incarcerated or is being treated a petition for
12 a hearing on whether he or she, as of the date of the Board of ~~Prison~~
13 ~~Terms~~ *Parole Hearings* hearing, met the criteria of Section 2962.
14 The court shall conduct a hearing on the petition within 60 calendar
15 days after the petition is filed, unless either time is waived by the
16 petitioner or his or her counsel, or good cause is shown. Evidence
17 offered for the purpose of proving the prisoner's behavior or mental
18 status subsequent to the Board of ~~Prison Terms~~ *Parole Hearings*
19 hearing shall not be considered. The order of the Board of ~~Prison~~
20 ~~Terms~~ *Parole Hearings* shall be in effect until the completion of
21 the court proceedings. The court shall advise the petitioner of his
22 or her right to be represented by an attorney and of the right to a
23 jury trial. The attorney for the petitioner shall be given a copy of
24 the petition, and any supporting documents. The hearing shall be
25 a civil hearing; however, in order to reduce costs, the rules of
26 criminal discovery, as well as civil discovery, shall be applicable.
27 The standard of proof shall be beyond a reasonable doubt, and if
28 the trial is by jury, the jury shall be unanimous in its verdict. The
29 trial shall be by jury unless waived by both the person and the
30 district attorney. The court may, upon stipulation of both parties,
31 receive in evidence the affidavit or declaration of any psychiatrist,
32 psychologist, or other professional person who was involved in
33 the certification and hearing process, or any professional person
34 involved in the evaluation or treatment of the petitioner during the
35 certification process. The court may allow the affidavit or
36 declaration to be read and the contents thereof considered in the
37 rendering of a decision or verdict in any proceeding held pursuant
38 to subdivision (b) or (c), or subdivision (a) of Section 2972. If the
39 court or jury reverses the determination of the Board of ~~Prison~~
40 ~~Terms~~ *Parole Hearings*, the court shall stay the execution of the

1 decision for ~~five~~ 30 working days to allow for an orderly release
 2 of the prisoner. *If the court or jury reverses the determination of*
 3 *the Board of Parole Hearings, the Department of Corrections and*
 4 *Rehabilitation, upon a determination that the individual is eligible*
 5 *for release pursuant to Section 3451, shall notify the probation*
 6 *department of the county of supervision of the pending release*
 7 *within five working days of the court order and work with the*
 8 *county of supervision to coordinate the orderly and safe release*
 9 *of the prisoner.*

10 (c) If the Board of ~~Prison Terms~~ *Parole Hearings* continues a
 11 parolee’s mental health treatment under Section 2962 when it
 12 continues the parolee’s parole under Section 3001, the procedures
 13 of this section shall only be applicable for the purpose of
 14 determining if the parolee has a severe mental disorder, whether
 15 the parolee’s severe mental disorder is not in remission or cannot
 16 be kept in remission without treatment, and whether by reason of
 17 his or her severe mental disorder, the parolee represents a
 18 substantial danger of physical harm to others.

19 ~~SECTION 1. Section 3000.08 of the Penal Code, as amended~~
 20 ~~by Section 35 of Chapter 43 of the Statutes of 2012, is amended~~
 21 ~~to read:~~

22 ~~3000.08. (a) A person released from state prison prior to or~~
 23 ~~on or after July 1, 2013, after serving a prison term, or whose~~
 24 ~~sentence has been deemed served pursuant to Section 2900.5, for~~
 25 ~~any of the following crimes is subject to parole supervision by the~~
 26 ~~Department of Corrections and Rehabilitation and the jurisdiction~~
 27 ~~of the court in the county in which the parolee is released or resides~~
 28 ~~for the purpose of hearing petitions to revoke parole and impose~~
 29 ~~a term of custody:~~

30 ~~(1) A serious felony as described in subdivision (e) of Section~~
 31 ~~1192.7.~~

32 ~~(2) A violent felony as described in subdivision (e) of Section~~
 33 ~~667.5.~~

34 ~~(3) A crime for which the person was sentenced pursuant to~~
 35 ~~paragraph (2) of subdivision (e) of Section 667 or paragraph (2)~~
 36 ~~of subdivision (e) of Section 1170.12.~~

37 ~~(4) Any crime for which the person is classified as a High Risk~~
 38 ~~Sex Offender.~~

1 ~~(5) Any crime for which the person is required, as a condition~~
2 ~~of parole, to undergo treatment by the State Department of State~~
3 ~~Hospitals pursuant to Section 2962.~~

4 ~~(b) A person released from state prison after serving a prison~~
5 ~~term, or whose sentence has been deemed served pursuant to~~
6 ~~Section 2900.5, who has served a previous prison term for which~~
7 ~~he or she was required, as a condition of parole, to undergo~~
8 ~~treatment by the State Department of State Hospitals pursuant to~~
9 ~~Section 2962, is subject to parole supervision by the Department~~
10 ~~of Corrections and Rehabilitation and the jurisdiction of the court~~
11 ~~in the county in which the parolee is released or resides for the~~
12 ~~purpose of hearing petitions to revoke parole and impose a term~~
13 ~~of custody.~~

14 ~~(c) Notwithstanding any other law, all other offenders released~~
15 ~~from prison shall be placed on postrelease supervision pursuant~~
16 ~~to Title 2.05 (commencing with Section 3450).~~

17 ~~(d) At any time during the period of parole of a person subject~~
18 ~~to this section, if any parole agent or peace officer has probable~~
19 ~~cause to believe that the parolee is violating any term or condition~~
20 ~~of his or her parole, the agent or officer may, without warrant or~~
21 ~~other process and at any time until the final disposition of the case,~~
22 ~~arrest the person and bring him or her before the court, or the court~~
23 ~~may, in its discretion, issue a warrant for that person's arrest~~
24 ~~pursuant to Section 1203.2.~~

25 ~~(e) Upon review of the alleged violation and a finding of good~~
26 ~~cause that the parolee has committed a violation of law or violated~~
27 ~~his or her conditions of parole, the supervising parole agency may~~
28 ~~impose additional and appropriate conditions of supervision,~~
29 ~~including rehabilitation and treatment services and appropriate~~
30 ~~incentives for compliance, and impose immediate, structured, and~~
31 ~~intermediate sanctions for parole violations, including flash~~
32 ~~incarceration in a county jail. Periods of "flash incarceration," as~~
33 ~~defined in subdivision (c) are encouraged as one method of~~
34 ~~punishment for violations of a parolee's conditions of parole. This~~
35 ~~section does not preclude referrals to a reentry court pursuant to~~
36 ~~Section 3015.~~

37 ~~(f) "Flash incarceration" is a period of detention in county jail~~
38 ~~due to a violation of a parolee's conditions of parole. The length~~
39 ~~of the detention period can range between one and 10 consecutive~~
40 ~~days. Shorter, but if necessary more frequent, periods of detention~~

1 for violations of a parolee's conditions of parole shall appropriately
2 punish a parolee while preventing the disruption in a work or home
3 establishment that typically arises from longer periods of detention.

4 ~~(g) If the supervising parole agency has determined, following~~
5 ~~application of its assessment processes, that intermediate sanctions~~
6 ~~up to and including flash incarceration are not appropriate, the~~
7 ~~supervising parole agency shall, pursuant to Section 1203.2,~~
8 ~~petition the court in the county in which the parolee is being~~
9 ~~supervised to revoke parole. At any point during the process~~
10 ~~initiated pursuant to this section, a parolee may waive, in writing,~~
11 ~~his or her right to counsel, admit the parole violation, waive a court~~
12 ~~hearing, and accept the proposed parole modification or revocation.~~
13 ~~The petition shall include a written report that contains additional~~
14 ~~information regarding the petition, including the relevant terms~~
15 ~~and conditions of parole, the circumstances of the alleged~~
16 ~~underlying violation, the history and background of the parolee,~~
17 ~~and any recommendations. The Judicial Council shall adopt forms~~
18 ~~and rules of court to establish uniform statewide procedures to~~
19 ~~implement this subdivision, including the minimum contents of~~
20 ~~supervision agency reports. Upon a finding that the person has~~
21 ~~violated the conditions of parole, the court shall have authority to~~
22 ~~do any of the following:~~

23 ~~(1) Return the person to parole supervision with modifications~~
24 ~~of conditions, if appropriate, including a period of incarceration~~
25 ~~in county jail.~~

26 ~~(2) Revoke parole and order the person to confinement in the~~
27 ~~county jail.~~

28 ~~(3) Refer the person to a reentry court pursuant to Section 3015~~
29 ~~or other evidence-based program in the court's discretion.~~

30 ~~(h) Confinement pursuant to paragraphs (1) and (2) of~~
31 ~~subdivision (g) shall not exceed a period of 180 days in the county~~
32 ~~jail.~~

33 ~~(i) Notwithstanding any other law, if Section 3000.1 or~~
34 ~~paragraph (4) of subdivision (b) of Section 3000 applies to a person~~
35 ~~who is on parole and the court determines that the person has~~
36 ~~committed a violation of law or violated his or her conditions of~~
37 ~~parole, the person on parole shall be remanded to the custody of~~
38 ~~the Department of Corrections and Rehabilitation and the~~
39 ~~jurisdiction of the Board of Parole Hearings for the purpose of~~
40 ~~future parole consideration.~~

1 (j) Notwithstanding subdivision (a), any of the following persons
2 released from state prison shall be subject to the jurisdiction of,
3 and parole supervision by, the Department of Corrections and
4 Rehabilitation for a period of parole up to three years or the parole
5 term the person was subject to at the time of the commission of
6 the offense, whichever is greater:

7 (1) The person is required to register as a sex offender pursuant
8 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
9 1, and was subject to a period of parole exceeding three years at
10 the time he or she committed a felony for which they were
11 convicted and subsequently sentenced to state prison.

12 (2) The person was subject to parole for life pursuant to Section
13 3000.1 at the time of the commission of the offense that resulted
14 in a conviction and state prison sentence.

15 (k) Parolees subject to this section who have a pending
16 adjudication for a parole violation on July 1, 2013, are subject to
17 the jurisdiction of the Board of Parole Hearings. Parole revocation
18 proceedings conducted by the Board of Parole Hearings prior to
19 July 1, 2013, if reopened on or after July 1, 2013, are subject to
20 the jurisdiction of the Board of Parole Hearings.

21 (l) Except as described in subdivision (c), any person who is
22 convicted of a felony that requires community supervision and
23 who still has a period of state parole to serve shall discharge from
24 state parole at the time of release to community supervision.

25 SEC. 2. Section 3451 of the Penal Code is amended to read:

26 3451. (a) Notwithstanding any other law and except for persons
27 serving a prison term for any crime described in subdivision (b),
28 all persons released from prison on and after October 1, 2011, or,
29 whose sentence has been deemed served pursuant to Section 2900.5
30 after serving a prison term for a felony shall, upon release from
31 prison and for a period not exceeding three years immediately
32 following release, be subject to community supervision provided
33 by a county agency designated by each county's board of
34 supervisors which is consistent with evidence-based practices,
35 including, but not limited to, supervision policies, procedures,
36 programs, and practices demonstrated by scientific research to
37 reduce recidivism among individuals under postrelease supervision.

38 (b) This section shall not apply to any person released from
39 prison after having served a prison term for any of the following:

- 1 ~~(1) A serious felony described in subdivision (c) of Section~~
- 2 ~~1192.7.~~
- 3 ~~(2) A violent felony described in subdivision (c) of Section~~
- 4 ~~667.5.~~
- 5 ~~(3) A crime for which the person was sentenced pursuant to~~
- 6 ~~paragraph (2) of subdivision (c) of Section 667 or paragraph (2)~~
- 7 ~~of subdivision (c) of Section 1170.12.~~
- 8 ~~(4) Any crime for which the person is classified as a High Risk~~
- 9 ~~Sex Offender.~~
- 10 ~~(5) Any crime for which the person is required, as a condition~~
- 11 ~~of parole, to undergo treatment by the State Department of State~~
- 12 ~~Hospitals pursuant to Section 2962.~~
- 13 ~~(e) This section shall not apply to any person released from~~
- 14 ~~prison who has served a previous prison term from which the~~
- 15 ~~person was required, as a condition of parole, to undergo treatment~~
- 16 ~~by the State Department of State Hospitals pursuant to Section~~
- 17 ~~2962.~~
- 18 ~~(d) (1) Postrelease supervision under this title shall be~~
- 19 ~~implemented by a county agency according to a postrelease strategy~~
- 20 ~~designated by each county's board of supervisors.~~
- 21 ~~(2) The Department of Corrections and Rehabilitation shall~~
- 22 ~~inform every prisoner subject to the provisions of this title, upon~~
- 23 ~~release from state prison, of the requirements of this title and of~~
- 24 ~~his or her responsibility to report to the county agency responsible~~
- 25 ~~for serving that inmate. The department shall also inform persons~~
- 26 ~~serving a term of parole for a felony offense who are subject to~~
- 27 ~~this section of the requirements of this title and of his or her~~
- 28 ~~responsibility to report to the county agency responsible for serving~~
- 29 ~~that parolee. Thirty days prior to the release of any person subject~~
- 30 ~~to postrelease supervision by a county, the department shall notify~~
- 31 ~~the county of all information that would otherwise be required for~~
- 32 ~~parolees under subdivision (c) of Section 3003.~~