

ASSEMBLY BILL

No. 618

**Introduced by Assembly Member Maienschein
(Coauthor: Assembly Member Waldron)**

February 24, 2015

An act to amend Sections 2978 and 3041.7 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 618, as introduced, Maienschein. Parole: primary mental health clinicians.

(1) Existing law requires, as a condition of parole, that a prisoner who has a severe mental disorder, as defined, be treated by the State Department of State Hospitals, and requires the State Department of State Hospitals to provide the necessary treatment. Existing law authorizes a prisoner to request a hearing before the Board of Parole Hearings for the purpose of proving that the prisoner is subject to that parole condition. Existing law also authorizes a prisoner to request that the board appoint 2 independent professionals for that hearing.

If it is determined that the prisoner is subject to the parole condition described above, existing law requires, prior to release on parole, that the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals evaluate the prisoner at a facility of the Department of Corrections and Rehabilitation. Existing law requires the Board of Parole Hearings to appoint 2 independent professionals to conduct an additional review in certain circumstances.

Existing law imposes various requirements on the selection of the independent professionals described above, including, among other things, that they not be state government employees.

This bill would additionally require those independent professionals, at the request of the prisoner, to consult with a prisoner's primary mental health clinician, as defined, and if any, before making a recommendation concerning that prisoner to the board.

(2) Existing law specifies the applicable procedures for any hearing by the Board of Parole Hearings to set, postpone, or rescind a parole release date of a prisoner under a life sentence. Existing law also requires that those prisoners are entitled to be represented by counsel at those hearings, and that specified individuals be invited to those hearings.

This bill would require the board, at the request of the prisoner, to consult with a prisoner's primary mental health clinician if the board considers a Psychological Risk Assessment, as those terms are defined, as part of the board's determination of whether to set, postpone, or rescind a parole release date of a prisoner under a life sentence.

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 2978 of the Penal Code is amended to
2 read:

3 2978. (a) Any independent professionals appointed by the
4 Board of Parole Hearings for purposes of this article shall not be
5 state government employees; shall have at least five years of
6 experience in the diagnosis and treatment of mental disorders; and
7 shall include psychiatrists, and licensed psychologists who have
8 a doctoral degree in psychology.

9 (b) *An independent professional appointed by the Board of*
10 *Parole Hearings for purposes of this article shall, at the request*
11 *of the prisoner, consult with a prisoner's primary mental health*
12 *clinician, if any, before making a recommendation concerning that*
13 *prisoner to the board. For purposes of this subdivision, "primary*
14 *mental health clinician" means a licensed psychiatrist,*
15 *psychologist, or clinical social worker who regularly treats the*
16 *prisoner pursuant to this article, including, but not limited to, an*
17 *employee of the State Department of State Hospitals or a privately*
18 *hired person.*

1 ~~(b)~~

2 (c) On July 1 of each year the Department of Corrections and
3 Rehabilitation and the State Department of State Hospitals shall
4 submit to the Board of Parole Hearings a list of 20 or more
5 independent professionals on which both departments concur. The
6 professionals shall not be state government employees and shall
7 have at least five years of experience in the diagnosis and treatment
8 of mental disorders and shall include psychiatrists and licensed
9 psychologists who have a doctoral degree in psychology. For
10 purposes of this article, when the Board of Parole Hearings receives
11 the list, it shall only appoint independent professionals from the
12 list. The list shall not be binding on the Board of Parole Hearings
13 until it has received the list, and shall not be binding after June 30
14 following receipt of the list.

15 SEC. 2. Section 3041.7 of the Penal Code is amended to read:

16 3041.7. (a) (1) At any hearing for the purpose of setting,
17 postponing, or rescinding a parole release date of a prisoner under
18 a life sentence, the prisoner shall be entitled to be represented by
19 counsel and the provisions of Section 3041.5 shall apply. The
20 Board of Parole Hearings shall provide by rule for the invitation
21 of the prosecutor of the county from which the prisoner was
22 committed, or his representative, to represent the interests of the
23 people at the hearing. The Board of Parole Hearings shall notify
24 the prosecutor and the Attorney General at least 30 days prior to
25 the date of the hearing.

26 (2) Notwithstanding Section 12550 of the Government Code,
27 the prosecutor of the county from which the prisoner was
28 committed, or his representative, who shall not be the Attorney
29 General, except in cases in which the Attorney General prosecuted
30 the case at the trial level, shall be the sole representative of the
31 interests of the people.

32 (b) (1) *At any hearing where the Board of Parole Hearings*
33 *considers a Psychological Risk Assessment, as described in Section*
34 *2240 of Article 2 of Chapter 3 of Division 2 of Title 15 of the*
35 *California Code of Regulations, as part of its determination of*
36 *whether to set, postpone, or rescind a parole release date of a*
37 *prisoner under a life sentence, the board shall, at the request of*
38 *the prisoner under a life sentence, also consult with the prisoner's*
39 *primary mental health clinician if that person exists.*

1 (2) *For purposes of this section, “primary mental health*
2 *clinician” means a licensed psychiatrist, psychologist, or clinical*
3 *social worker who regularly treats the prisoner, including, but not*
4 *limited to, a state employee or a privately hired person.*

O