

ASSEMBLY BILL

No. 1006

Introduced by Assembly Member Levine

February 26, 2015

An act to add Chapter 16 (commencing with Section 1425) to Title 10 of Part 2 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1006, as introduced, Levine. Prisoners: mental health treatment.

Existing law prohibits a person from being tried, adjudged to punishment, or having his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the defendant to competency. Existing law credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the term of any imprisonment for which the defendant is sentenced.

This bill would authorize, if a defendant has pled guilty or nolo contendere to, or been convicted of, an offense that will result in a sentence to state prison, the defendant or the prosecutor to file a petition for a hearing to determine if the defendant suffers from a diagnosable mental condition and would authorize the court, on its own motion, to order that hearing. The bill would require that petition to be filed after the defendant's conviction, but before his or her sentencing, and to allege that the defendant suffers from a diagnosable mental illness and requests mental health treatment. The bill would require the court, after a hearing on the matter, and if the court finds by a preponderance of

the evidence that the defendant suffers from a diagnosable mental illness, to make one or more specified orders, including, among others, an order that the Department of Corrections and Rehabilitation place the defendant in a mental health program within the state prison. The bill would provide that the defendant has the right to counsel for these proceedings.

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. This act shall be known and may be cited as the
2 Mental Health Justice Act.

3 SEC. 2. Chapter 16 (commencing with Section 1425) is added
4 to Title 10 of Part 2 of the Penal Code, to read:

5
6 CHAPTER 16. MENTAL HEALTH TREATMENT
7

8 1425. (a) (1) If a defendant has pled guilty or nolo contendere
9 to, or been convicted of, an offense that will result in a sentence
10 to state prison, the defendant or the prosecutor may file a petition
11 for a hearing to determine if the defendant suffers from a
12 diagnosable mental illness. The petition shall be filed after the
13 defendant’s plea or conviction, but before his or her sentencing.

14 (2) If a defendant has pled guilty or nolo contendere to, or been
15 convicted of, an offense that will result in a sentence to state prison,
16 the court, on its own motion, may order the hearing described in
17 paragraph (1).

18 (b) A petition filed pursuant to paragraph (1) of subdivision (a)
19 shall allege that the defendant suffers from a diagnosable mental
20 illness and requests mental health treatment.

21 (c) Upon the filing of a petition pursuant to paragraph (1) of
22 subdivision (a), or upon its own motion pursuant to paragraph (2)
23 of subdivision (a), the court shall set an evidentiary hearing, to be
24 heard in conjunction with the defendant’s sentencing, to determine
25 whether the defendant suffers from a diagnosable mental illness.

26 (d) If, after the hearing described in subdivision (c), the court
27 determines by a preponderance of evidence that the defendant
28 suffers from a diagnosable mental illness, the court shall order one
29 or more of the following:

1 (1) Order that the defendant serve all or a part of his or her
2 sentence in a residential mental health treatment facility instead
3 of in the state prison, unless that placement would pose an
4 unreasonable risk of danger to public safety.

5 (2) Order the Department of Corrections and Rehabilitation to
6 place the defendant in a mental health program within the state
7 prison, at a level of care determined to be appropriate by the
8 department's mental health staff within 30 days of the defendant's
9 placement in the state prison, or sooner upon order of the court.

10 (3) Order the Department of Corrections and Rehabilitation to
11 prepare a post-release mental health treatment plan six months
12 prior to the defendant's release from custody. The treatment plan
13 shall specify the manner in which the defendant will receive mental
14 health treatment services following release from custody, and shall
15 address, if applicable and in the discretion of the court, medication
16 management, housing, and substance abuse treatment.

17 (e) (1) (A) The defendant or prosecutor may, at any time,
18 petition the court for approval to transfer the defendant from a
19 residential mental health treatment facility to a mental health
20 program within the state prison for the remainder of the defendant's
21 sentence.

22 (B) The defendant, prosecutor, or Department of Corrections
23 and Rehabilitation may, at any time, petition the court for
24 permission to remove the defendant from a mental health program
25 within the state prison.

26 (C) The defendant, prosecutor, or Department of Corrections
27 and Rehabilitation may, at any time, petition the court for dismissal
28 of the requirement that the Department of Corrections and
29 Rehabilitation prepare a post-release mental health treatment plan.

30 (2) The court shall approve a petition described in paragraph
31 (1) only if the court determines by a preponderance of the evidence
32 that approving the petition is in the best interest of the defendant.

33 (f) The defendant shall have the right to counsel for all
34 proceedings under this section.

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