

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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. *Existing law, as added by Proposition 184, adopted November 8, 1994, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, prohibits certain recidivist offenders from being committed to any facility other than a state prison.*

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~~, *prison or county jail*, the defendant or the prosecutor to ~~file a petition for a hearing to determine if~~ *submit evidence that* the defendant suffers from a diagnosable mental condition ~~and~~

would authorize the court, on its own motion, to order that hearing. *that was a substantial factor that contributed to the defendant’s criminal conduct.* The bill would require that ~~petition to the evidence be filed submitted~~ 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. *sentencing.* 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 *court to consider any evidence submitted as described above in conjunction with the defendant’s sentencing, and would authorize the court to order the Department of Corrections and Rehabilitation or county jail authority, as applicable, to place the defendant in a residential mental health program within the state prison.* *treatment facility. This placement would not be available to a defendant who is subject to the Three Strikes Law. The bill would also authorize the court to order the department or jail authority to place the defendant in a mental health program within the state prison or county jail, respectively.* The bill would provide that the defendant has the right to counsel for these proceedings.

By imposing additional duties upon county jail authorities, this bill 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: ~~no~~-yes.

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:

CHAPTER 16. MENTAL HEALTH TREATMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

1425. (a) ~~(1)~~ 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, *prison or county jail*, the defendant or the prosecutor may file a petition for a hearing to determine if *submit evidence that* the defendant suffers from a diagnosable mental illness. *illness that was a substantial factor that contributed to the defendant's criminal conduct.* The ~~petition~~ evidence shall be filed after the defendant's plea or conviction, but before his or her sentencing.

~~(2)~~ 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 court, on its own motion, may order the hearing described in paragraph (1).

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

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

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

(b) If evidence is submitted pursuant to subdivision (a), the court shall consider that evidence in conjunction with the defendant's sentencing.

(c) Upon consideration of the evidence submitted pursuant to subdivision (a), notwithstanding any other law, if the court determines that it is in the best interests of public safety, the court may order one or more of the following:

~~(1)~~ ~~Order that~~ (A) That the defendant ~~serve~~ *serve*, if the defendant agrees, all or a part of his or her sentence in a residential mental health treatment facility instead of in the state prison, *prison or county jail*, unless that placement would pose an unreasonable risk of danger to public safety.

(B) This paragraph does not apply to a defendant subject to Section 1170.12.

1 (2) ~~Order the~~ The Department of Corrections and Rehabilitation
 2 ~~or county jail authority, as applicable,~~ to place the defendant in a
 3 mental health program within the state ~~prison,~~ *prison or county*
 4 *jail system, respectively,* at a level of care determined to be
 5 appropriate by the department’s mental health staff ~~or county~~
 6 ~~mental health staff,~~ within 30 ~~days~~ *days,* of the defendant’s
 7 placement in the state ~~prison,~~ *or sooner upon order of the court.*
 8 *prison or county jail.*

9 (3) ~~Order the~~ The Department of Corrections and Rehabilitation
 10 ~~or the county jail authority, as applicable, regardless of the type~~
 11 ~~of crime committed~~ to prepare a ~~post-release~~ *postrelease* mental
 12 health treatment plan six months prior to the defendant’s release
 13 ~~from custody.~~ *to parole or postrelease community supervision.*
 14 The treatment plan shall specify the manner in which the defendant
 15 will receive mental health treatment services following ~~release~~
 16 ~~from custody,~~ *that release,* and shall address, if applicable and in
 17 the discretion of the court, medication management, housing, and
 18 substance abuse treatment.

19 (e)

20 (d) (1) ~~(A)~~ The defendant or prosecutor may, at any time,
 21 petition the court for approval to transfer the defendant from a
 22 residential mental health treatment facility to a mental health
 23 program within the state ~~prison~~ *or county jail* for the remainder of
 24 the defendant’s sentence.

25 ~~(B)~~

26 (2) The defendant, prosecutor, ~~or~~ Department of Corrections
 27 and Rehabilitation ~~or county jail authority, as applicable,~~ may, at
 28 any time, petition the court for permission to remove the defendant
 29 from a mental health program within the state ~~prison.~~ *prison or*
 30 *county jail system, respectively.*

31 ~~(C)~~

32 (3) The defendant, prosecutor, ~~or~~ Department of Corrections
 33 and Rehabilitation ~~or county jail authority, as applicable,~~ may, at
 34 any time, petition the court for dismissal of the requirement that
 35 the Department of Corrections and Rehabilitation ~~or county jail~~
 36 ~~authority, respectively,~~ prepare a ~~post-release~~ *postrelease* mental
 37 health treatment plan.

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

1 ~~(f)~~
2 (e) The defendant shall have the right to counsel for all
3 proceedings under this section.
4 *SEC. 3. If the Commission on State Mandates determines that*
5 *this act contains costs mandated by the state, reimbursement to*
6 *local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

O