

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2262**

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**Introduced by Assembly Members Levine, Thurmond, and Low**

February 18, 2016

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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 2262, 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 or county jail, the defendant or the prosecutor submit evidence that the defendant suffers from a diagnosable mental condition that was a substantial factor that contributed to the defendant's

criminal conduct. The bill would require that the evidence be submitted after the defendant's conviction, but before his or her sentencing. The bill would require the 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 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.

*This bill would authorize a defendant who is or has been eligible for public mental health services due to a serious mental illness or who is eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness to petition the court, after the defendant's plea or conviction but prior to sentencing, for a sentence that includes mental health treatment. The bill would authorize a court, if it finds that the defendant has shown that he or she meets the criteria by a preponderance of the evidence, to order the Department of Corrections and Rehabilitation or the county authority to provide specified mental health service, including placement in a residential mental health treatment facility instead of state prison or county jail, placement in a mental health program within the state prison or county jail, or preparation of a postrelease mental health treatment plan. The bill would authorize the court, upon petition of the defendant or the prosecution, to recall a sentence that includes a mental health order and resentence the defendant to other mental health treatment or resentence the defendant without mental health treatment. 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: 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. The Legislature finds and declares the following:*

4       (a) *Exposure to violence increases the risk of developing a*  
5     *mental health condition such as post-traumatic stress disorder.*  
6     *Children in underserved communities are more likely to be exposed*  
7     *to violence than other children.*

8       (b) *Ten times as many people with mental illness are in prisons*  
9     *and jails today than are in mental health treatment facilities.*

10     (c) *Correctional facilities spend two to three times more money*  
11     *on adults with mental illnesses than they do on people who do not*  
12     *live with a mental illness.*

13     (d) *Despite overall decreasing prison populations, California's*  
14     *prisons are experiencing increasing demand for mental health*  
15     *treatment services as prison inmates require mental health*  
16     *treatment at higher rates. This number is anticipated to continue*  
17     *to increase in the next five years and beyond.*

18     (e) *In California, the annual prison cost for an inmate in the*  
19     *general population is \$51,000, while the annual community housing*  
20     *and outpatient treatment costs for a person with mental illness are*  
21     *60 percent less at \$20,412.*

22     (f) *Nearly half of all prisoners in California are mentally ill and*  
23     *have received psychiatric treatment within the past year. This*  
24     *number has almost doubled in the last 15 years, making jails and*  
25     *prisons the de facto mental health system.*

26     (g) *Individuals with mental illnesses tend to stay longer in prison*  
27     *or jail and, when released, are at a higher risk of returning to*  
28     *prison or jail than those without these illnesses.*

29     (h) *Mental health court participants have a significantly lower*  
30     *(47 percent) recidivism rate compared to similar defendants in*  
31     *traditional court.*

1       (i) Mental health courts allow for the consideration of a  
2 defendant's mental health status during court proceedings and  
3 have shown to save \$7 in costs for every \$1 spent.

4       (j) According to the United States Supreme Court, conditions  
5 in California prisons exacerbate mental health issues significantly.  
6 Offenders with mental illness are often subjected to higher rates  
7 of physical and sexual trauma, forced restraints, solitary  
8 confinement, and overmedication while incarcerated. Those who  
9 are kept in isolation are at higher risk for psychiatric injury,  
10 self-harm, and suicide.

11       (k) A defendant's mental illness should inform case processing  
12 and the nature of any criminal charges, in alignment with public  
13 safety and a defendant's constitutional rights.

14       (i) California must increase diversion programs to redirect  
15 defendants with mental illness away from prisons and jails, which  
16 exacerbate mental illnesses, impede treatment, and increase costs,  
17 and toward proven mental health treatment services.

SEC. 2.

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

## CHAPTER 16. MENTAL HEALTH TREATMENT

24 1425. (a) If a defendant has pled guilty or nolo contendere to,  
25 or been convicted of, an offense that will result in a sentence to  
26 state prison or county jail, the defendant or the prosecutor may  
27 submit evidence that the defendant suffers from a diagnosable  
28 mental illness that was a substantial factor that contributed to the  
29 defendant's criminal conduct. The evidence shall be filed after the  
30 defendant's plea or conviction, but before his or her sentencing.

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

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

38 (1) (A) That the defendant serve, if the defendant agrees, all or  
39 a part of his or her sentence in a residential mental health treatment  
40 facility instead of in the state prison or county jail, unless that

1 placement would pose an unreasonable risk of danger to public  
2 safety.

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

5 (2) The Department of Corrections and Rehabilitation or county  
6 jail authority, as applicable, to place the defendant in a mental  
7 health program within the state prison or county jail system,  
8 respectively, at a level of care determined to be appropriate by the  
9 department's mental health staff or county mental health staff,  
10 within 30 days, of the defendant's placement in the state prison or  
11 county jail.

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

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

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

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

37 (e) The defendant shall have the right to counsel for all  
38 proceedings under this section.

39 1425. (a) A defendant who has pleaded guilty or nolo  
40 contendere to, or was convicted of, a felony or misdemeanor and

1 who currently is, or at any prior time was, eligible for public  
2 mental health services due to serious mental illness or who  
3 currently is, or at any prior time was, eligible for Social Security  
4 Disability Insurance benefits due to a diagnosed mental illness  
5 may petition the court for a sentence that includes mental health  
6 treatment. The petition shall be filed after the defendant's plea or  
7 conviction, but before his or her sentencing.

8 (b) The defendant shall bear the burden of establishing by a  
9 preponderance of the evidence that he or she meets the criteria in  
10 subdivision (a).

11 (c) If the court determines that the defendant has met his or her  
12 burden, as described in subdivision (b), and that it is in the public  
13 interest, the court may order that the defendant's sentence include  
14 one or more of the following:

15 (1) (A) A requirement that the defendant serve, if the defendant  
16 agrees, all or a part of his or her sentence in a residential mental  
17 health treatment facility instead of in the state prison or a county  
18 jail, if that placement would not pose an unreasonable risk of  
19 danger to public safety and is in the interest of justice pursuant to  
20 Section 1385.

21 (B) A defendant is not eligible for subparagraph (A) if his or  
22 her current plea or conviction is for a violent felony, as defined  
23 in subdivision (c) of Section 667.5, or if the defendant is required  
24 by statute to serve his or her entire sentence only in state prison.

25 (2) Regardless of the offense to which the defendant pleaded  
26 guilty or nolo contendere or for which the defendant was convicted,  
27 a requirement that the Department of Corrections and  
28 Rehabilitation or county jail authority, as applicable, place the  
29 defendant in a mental health program within the state prison or  
30 county jail system at a level of care determined to be appropriate  
31 by the department's mental health staff or county mental health  
32 staff, within 30 days of the defendant's sentencing.

33 (3) Regardless of the offense to which the defendant pleaded  
34 guilty or nolo contendere or for which the defendant was convicted,  
35 a requirement that the Department of Corrections and  
36 Rehabilitation or the county jail authority, as applicable, prepare  
37 a postrelease mental health treatment plan six months prior to the  
38 defendant's release from custody. The treatment plan shall specify  
39 the manner in which the defendant will receive mental health  
40 treatment services following release from custody and shall

1   *address, if applicable and at the discretion of the court, medication*  
2   *management, housing, and substance abuse treatment.*

3    (d) At any time, upon a petition from the defendant or  
4    prosecutor, if it is in the public interest, the court may recall a  
5    sentence that includes a mental health treatment order issued  
6    under this section and either resentence the defendant to other  
7    mental health treatment authorized under subdivision (c) or  
8    resentence the defendant in the same manner as if he or she had  
9    not previously been sentenced with application of this section. The  
10   defendant shall receive credit for the time he or she served on the  
11   prior sentence.

12   (e) The defendant shall have the right to counsel for all  
13   proceedings under this section.

14   **SEC. 3.**

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

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22   **CORRECTIONS:**

23   **Heading—Line 1.**

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