

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2262

Introduced by Assembly Members Levine, Thurmond, and Low

February 18, 2016

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 (l) 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.

18 ~~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:

21

22 CHAPTER 16. MENTAL HEALTH TREATMENT

23

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 ~~(c) 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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