

ASSEMBLY BILL

No. 2604

Introduced by Assembly Member Thurmond

February 19, 2016

An act to add Chapter 4.9 (commencing with Section 1175) to Title 7 of Part 2 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 2604, as introduced, Thurmond. Inmates: 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 a defendant who pled guilty or nolo contendere to, or was convicted of, a felony or misdemeanor and who currently is, or at any prior time was, eligible for public mental health services due to a serious mental illness or who is, or at any prior time was, eligible for Social Security Insurance due to a diagnosed mental illness, to petition the court for a sentence that includes mental health treatment. The bill would authorize the court, if the defendant establishes by a preponderance of the evidence that he or she meets one of those eligibility criteria, to include one or more specified mental health treatment provisions in the defendant's sentence, including, among

others, a requirement that the defendant serve all or a part of his or her sentence in a residential mental health treatment facility. The bill would provide that the defendant has the right to counsel for these proceedings.

By granting defendants the right to counsel in these proceedings and 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. Chapter 4.9 (commencing with Section 1175) is added
4 to Title 7 of Part 2 of the Penal Code, to read:

5
6 CHAPTER 4.9. MENTAL HEALTH TREATMENT
7

8 1175. (a) A defendant who pled guilty or nolo contendere to,
9 or was convicted of, a felony or misdemeanor and who currently
10 is, or at any prior time was, eligible for public mental health
11 services due to serious mental illness or who currently is, or at any
12 prior time was, eligible for Social Security Insurance due to a
13 diagnosed mental illness may petition the court for a sentence that
14 includes mental health treatment. The petition shall be filed after
15 the defendant's plea or conviction, but before his or her sentencing.

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

19 (c) If the court determines that the defendant met his or her
20 burden, as described in subdivision (b), and that it is in the public
21 interest, the court may order that his or her sentence include one
22 or more of the following:

1 (1) If the defendant's current plea or conviction was not for a
2 serious felony described in subdivision (c) of Section 1192.7, or
3 a violent felony described in subdivision (c) of Section 667.5, a
4 requirement that the defendant serve, if the defendant agrees, all
5 or a part of his or her sentence in a residential mental health
6 treatment facility instead of in the state prison or a county jail,
7 unless that placement would pose an unreasonable risk of danger
8 to public safety.

9 (2) Regardless of the offense to which the defendant pled guilty
10 or nolo contendere or for which the defendant was convicted, a
11 requirement that the Department of Corrections and Rehabilitation
12 or county jail authority, as applicable, place the defendant in a
13 mental health program within the state prison or county jail system,
14 respectively, at a level of care determined to be appropriate by the
15 department's mental health staff or county mental health staff,
16 within 30 days of the defendant's sentencing.

17 (3) Regardless of the offense the defendant pled guilty or nolo
18 contendere to, or was convicted of, a requirement that the
19 Department of Corrections and Rehabilitation or the county jail
20 authority, as applicable, prepare a postrelease mental health
21 treatment plan six months prior to the defendant's release from
22 custody. The treatment plan shall specify the manner in which the
23 defendant will receive mental health treatment services following
24 release from custody, and shall address, if applicable and at the
25 discretion of the court, medication management, housing, and
26 substance abuse treatment.

27 (d) At any time, upon a petition from the defendant or
28 prosecutor, if it is in the public interest, the court may recall a
29 sentence that includes a mental health treatment order issued under
30 this section and either resentence the defendant to any other mental
31 health treatment authorized under subdivision (c) or resentence
32 the defendant in the same manner as if he or she had not previously
33 been sentenced with application of this section, provided that the
34 initial sentence, and the defendant receives credit for the time he
35 or she served.

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

38 SEC. 3. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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