

**Introduced by Senator Beall**February 4, 2016

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An act to amend Sections 1026 and 2968 of the Penal Code, and to add Section 4146 to the Welfare and Institutions Code, relating to criminal procedure.

## LEGISLATIVE COUNSEL'S DIGEST

SB 955, as introduced, Beall. State hospital commitment: compassionate release.

Existing law requires, when a defendant pleads not guilty by reason of insanity, that a jury determine whether the defendant was sane or insane at the time the offense was committed. Under existing law, if a defendant is found to be not guilty by reason of insanity, the court is required to commit the person to a state hospital, public or private treatment facility, or place him or her on outpatient status, as specified. Existing law requires the Director of State Hospitals to notify the Board of Parole Hearings, and requires the State Department of State Hospitals to discontinue treating a parolee, if the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission. Existing law, subject to exceptions, authorizes the release of a prisoner from state prison if the court finds that the prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 6 months, as determined by a physician employed by the department, and that conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

This bill would establish similar release provisions for a defendant who has been committed to a state hospital because, among other reasons, the defendant is incompetent to stand trial or has a severe

mental disorder. The bill would require the Director of State Hospitals to notify the Board of Parole Hearings, and would require the State Department of State Hospitals to discontinue treating a parolee, if the prisoner meets the criteria established by the bill for release from the state hospital. The bill would make additional conforming changes and would authorize the director to adopt emergency regulations to implement these provisions.

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. Section 1026 of the Penal Code is amended to  
 2 read:  
 3 1026. (a) When a defendant pleads not guilty by reason of  
 4 insanity, and also joins with it another plea or pleas, the defendant  
 5 shall first be tried as if only ~~such~~ *those* other plea or pleas had been  
 6 entered, and in that trial the defendant shall be conclusively  
 7 presumed to have been sane at the time the offense is alleged to  
 8 have been committed. If the jury ~~shall find~~ *finds* the defendant  
 9 guilty, or if the defendant pleads only not guilty by reason of  
 10 insanity, then the question whether the defendant was sane or  
 11 insane at the time the offense was committed shall be promptly  
 12 tried, either before the same jury or before a new jury in the  
 13 discretion of the court. In that trial, the jury shall return a verdict  
 14 either that the defendant was sane at the time the offense was  
 15 committed or was insane at the time the offense was committed.  
 16 If the verdict or finding is that the defendant was sane at the time  
 17 the offense was committed, the court shall sentence the defendant  
 18 as provided by law. If the verdict or finding ~~be~~ *is* that the defendant  
 19 was insane at the time the offense was committed, the court, unless  
 20 it ~~shall appear~~ *appears* to the court that the sanity of the defendant  
 21 has been recovered fully, shall direct that the defendant be  
 22 committed to the State Department of State Hospitals for the care  
 23 and treatment of the mentally disordered or any other appropriate  
 24 public or private treatment facility approved by the community  
 25 program director, or the court may order the defendant placed on  
 26 outpatient status pursuant to Title 15 (commencing with Section  
 27 1600) of Part 2.

1 (b) Prior to making the order directing that the defendant be  
2 committed to the State Department of State Hospitals or other  
3 treatment facility or placed on outpatient status, the court shall  
4 order the community program director or a designee to evaluate  
5 the defendant and to submit to the court within 15 judicial days of  
6 the order a written recommendation as to whether the defendant  
7 should be placed on outpatient status or committed to the State  
8 Department of State Hospitals or other treatment facility. ~~No~~ A  
9 person shall *not* be admitted to a state hospital or other treatment  
10 facility or placed on outpatient status under this section without  
11 having been evaluated by the community program director or a  
12 designee. If, however, it appears to the court that the sanity of the  
13 defendant has been recovered fully, the defendant shall be  
14 remanded to the custody of the sheriff until the issue of sanity ~~shall~~  
15 ~~have~~ *has* been finally determined in the manner prescribed by law.  
16 A defendant committed to a state hospital or other treatment facility  
17 or placed on outpatient status pursuant to Title 15 (commencing  
18 with Section 1600) of Part 2 shall not be released from  
19 confinement, parole, or outpatient status unless and until the court  
20 ~~which that~~ committed the ~~person shall~~ *person*, after notice and  
21 hearing, ~~find finds~~ and ~~determine determines~~ that the person's  
22 sanity has been ~~restored~~ *restored*, or *meets the criteria for release*  
23 *pursuant to Section 4146 of the Welfare and Institutions Code*.  
24 Nothing in this section ~~shall prevent~~ *prevents* the transfer of the  
25 patient from one state hospital to any other state hospital by proper  
26 authority. Nothing in this section ~~shall prevent~~ *prevents* the transfer  
27 of the patient to a hospital in another state in the manner provided  
28 in Section 4119 of the Welfare and Institutions Code.

29 (c) If the defendant is committed or transferred to the State  
30 Department of State Hospitals pursuant to this section, the court  
31 may, upon receiving the written recommendation of the medical  
32 director of the state hospital and the community program director  
33 that the defendant be transferred to a public or private treatment  
34 facility approved by the community program director, order the  
35 defendant transferred to that facility. If the defendant is committed  
36 or transferred to a public or private treatment facility approved by  
37 the community program director, the court may, upon receiving  
38 the written recommendation of the community program director,  
39 order the defendant transferred to the State Department of State  
40 Hospitals or to another public or private treatment facility approved

1 by the community program director. ~~Where~~ *If* either the defendant  
 2 or the prosecuting attorney chooses to contest either kind of order  
 3 of transfer, a petition may be filed in the court requesting a ~~hearing~~  
 4 *hearing*, which shall be held if the court determines that sufficient  
 5 grounds exist. At that hearing, the prosecuting attorney or the  
 6 defendant may present evidence bearing on the order of transfer.  
 7 The court shall use the same procedures and standards of proof as  
 8 used in conducting probation revocation hearings pursuant to  
 9 Section 1203.2.

10 (d) Prior to making an order for transfer under this section, the  
 11 court shall notify the defendant, the attorney of record for the  
 12 defendant, the prosecuting attorney, and the community program  
 13 director or a designee.

14 (e) When the court, after considering the placement  
 15 recommendation of the community program director required in  
 16 subdivision (b), orders that the defendant be committed to the State  
 17 Department of State Hospitals or other public or private treatment  
 18 facility, the court shall provide copies of the following documents  
 19 prior to the admission of the defendant to the State Department of  
 20 State Hospitals or other treatment facility where the defendant is  
 21 to be committed:

22 (1) The commitment order, including a specification of the  
 23 charges.

24 (2) A computation or statement setting forth the maximum term  
 25 of commitment in accordance with Section 1026.5.

26 (3) A computation or statement setting forth the amount of credit  
 27 for time served, if any, to be deducted from the maximum term of  
 28 commitment.

29 (4) State summary criminal history information.

30 (5) Any arrest reports prepared by the police department or other  
 31 law enforcement agency.

32 (6) Any court-ordered psychiatric examination or evaluation  
 33 reports.

34 (7) The community program director's placement  
 35 recommendation report.

36 (8) Any medical records.

37 (f) If the defendant is confined in a state hospital or other  
 38 treatment facility as an inpatient, the medical director of the facility  
 39 shall, at six-month intervals, submit a report in writing to the court  
 40 and the community program director of the county of commitment,

1 or a designee, setting forth the status and progress of the defendant.  
2 The court shall transmit copies of these reports to the prosecutor  
3 and defense counsel.

4 (g) For purposes of this section and Sections 1026.1 to 1026.6,  
5 inclusive, “community program director” means the person,  
6 agency, or entity designated by the State Department of State  
7 Hospitals pursuant to Section 1605 of this code and Section 4360  
8 of the Welfare and Institutions Code.

9 SEC. 2. Section 2968 of the Penal Code is amended to read:

10 2968. If the prisoner’s severe mental disorder is put into  
11 remission during the parole period, and can be kept in remission,  
12 *or if the prisoner meets the criteria for release pursuant to Section*  
13 *4146 of the Welfare and Institutions Code*, the Director of State  
14 Hospitals shall notify the Board of Parole Hearings and the State  
15 Department of State Hospitals shall discontinue treating the  
16 parolee.

17 SEC. 3. Section 4146 is added to the Welfare and Institutions  
18 Code, to read:

19 4146. (a) (1) A physician employed by the department who  
20 determines that a patient has six months or less to live shall notify  
21 the medical director and the patient advocate of the prognosis. If  
22 the medical director concurs with the diagnosis, he or she shall  
23 immediately notify the Director of State Hospitals. Within 72 hours  
24 of receiving notification, the director or the director’s designee  
25 shall notify the patient of the discharge procedures under this  
26 section and obtain the patient’s consent for discharge. The director  
27 or director’s designee shall arrange for the patient to designate a  
28 family member or other outside agent to be notified as to the  
29 patient’s medical condition, prognosis, and release procedures  
30 under this section. If the patient is unable to designate a family  
31 member or other outside agent, the director or the director’s  
32 designee shall contact any emergency contact listed, or the patient  
33 advocate if no contact is listed.

34 (2) The director or the director’s designee shall provide the  
35 patient and his or her family member, agent, emergency contact,  
36 or patient advocate with updated information throughout the release  
37 process with regard to the patient’s medical condition and the  
38 status of the patient’s release proceedings, including the discharge  
39 plan.

1 (3) The patient or his or her family member or designee may  
2 contact the medical director or director at the state hospital where  
3 the patient is located or the Director of State Hospitals to request  
4 consideration for a recommendation from the director to the court  
5 that the patient’s commitment be dismissed and the patient released  
6 from the department facility.

7 (4) Upon receipt of a notification or request pursuant to  
8 paragraph (1) or (3), respectively, if the Director of State Hospitals  
9 determines that a patient satisfies the criteria set forth in paragraph  
10 (5), the director may recommend to the court that the patient’s  
11 commitment be dismissed and the patient released from the  
12 department facility.

13 (5) The court shall have the discretion to dismiss the  
14 commitment and release the patient if the court finds that the facts  
15 described in subparagraphs (A) and (B) or subparagraphs (B) and  
16 (C) exist:

17 (A) The patient is terminally ill with an incurable condition  
18 caused by an illness or disease that would likely produce death  
19 within six months, as determined by a physician employed by the  
20 department.

21 (B) The conditions under which the prisoner would be released  
22 or receive treatment do not pose a threat to public safety.

23 (C) The patient is permanently medically incapacitated and  
24 requires 24-hour total care, and the medical director responsible  
25 for the patient’s care and the Director of State Hospitals both certify  
26 that the patient is incapable of receiving mental health treatment.

27 (b) Within 10 days of receipt of a recommendation for release  
28 by the director, the court shall hold a noticed hearing to consider  
29 whether the patient’s commitment should be dismissed and the  
30 patient released.

31 (c) A recommendation for dismissal submitted to the court shall  
32 include at least one medical evaluation, a discharge plan, a  
33 postrelease plan for the relocation and treatment of the patient,  
34 and the findings listed in paragraph (5) of subdivision (a). The  
35 court shall order the medical director to send copies of all medical  
36 records reviewed in developing the recommendation to both of  
37 the following parties:

38 (1) The district attorney of the county from which the patient  
39 was committed.

1 (2) The public defender of the county from which the patient  
2 was committed, or the patient's private attorney, if one is available.

3 (d) The matter shall be heard before the same court that  
4 originally committed the patient, if possible.

5 (e) If the court approves the recommendation for dismissal and  
6 release, the patient's commitment shall be dismissed and the patient  
7 shall be released by the department within 72 hours of receipt of  
8 the court's order, unless a longer time period is requested by the  
9 director and approved by the court.

10 (f) The director or his or her designee shall ensure that upon  
11 release, the patient has each of the following in his or her  
12 possession, or the possession of the patient's representative:

13 (1) A discharge plan.

14 (2) A discharge medical summary.

15 (3) Medical records.

16 (4) Identification.

17 (5) All necessary medications.

18 (6) Any property belonging to the patient.

19 (g) After discharge, any additional records shall be sent to the  
20 patient's forwarding address.

21 (h) The director may adopt regulations to implement this section.  
22 The adoption of regulations for the implementation of this section  
23 by the department is exempt from the Administrative Procedure  
24 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
25 Division 3 of Title 2 of the Government Code).