

AMENDED IN ASSEMBLY JUNE 22, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 4, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 955**

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**Introduced by Senator Beall  
(Coauthor: Senator Hancock)**

February 4, 2016

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An act to amend Section 1026 of, and to add Sections 1370.015 and 2977 to, 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 amended, 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, 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 compassionate 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~~. *been adjudged to punishment, or the defendant is a mentally disordered offender, including a person who has been found not guilty by reason of insanity.* 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 the 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 finds the defendant guilty, or if  
9     the defendant pleads only not guilty by reason of insanity, then  
10    the question whether the defendant was sane or insane at the time  
11    the offense was committed shall be promptly tried, either before  
12    the same jury or before a new jury in the discretion of the court.  
13    In that trial, the jury shall return a verdict either that the defendant  
14    was sane at the time the offense was committed or was insane at  
15    the time the offense was committed. If the verdict or finding is  
16    that the defendant was sane at the time the offense was committed,  
17    the court shall sentence the defendant as provided by law. If the  
18    verdict or finding is that the defendant was insane at the time the  
19    offense was committed, the court, unless it appears to the court  
20    that the sanity of the defendant has been recovered fully, shall  
21    direct that the defendant be committed to the State Department of  
22    State Hospitals for the care and treatment of the mentally  
23    disordered or any other appropriate public or private treatment  
24    facility approved by the community program director, or the court  
25    may order the defendant placed on outpatient status pursuant to  
26    Title 15 (commencing with Section 1600) of Part 2.

(b) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or committed to the State Department of State Hospitals or other treatment facility. A person shall not be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity has been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court that committed the person, after notice and hearing, finds and determines that the person's sanity has been restored, or meets the criteria for release pursuant to Section 4146 of the Welfare and Institutions Code. Nothing in this section prevents the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section prevents the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.

(c) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. If either the defendant or the

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

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

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

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

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

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

28 (4) State summary criminal history information.

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

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

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

35 (8) Any medical records.

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

1 The court shall transmit copies of these reports to the prosecutor  
2 and defense counsel.

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

8 SEC. 2. Section 1370.015 is added to the Penal Code, to read:

9 1370.015. A person in the care of the State Department of State  
10 Hospitals because he or she is incompetent to stand trial *or has*  
11 *been adjudged to punishment* may be eligible for compassionate  
12 release pursuant to Section 4146 of the Welfare and Institutions  
13 Code. In any case in which the criteria for compassionate release  
14 apply, the State Department of State Hospitals shall follow the  
15 procedures and standards in Section 4146 of the Welfare and  
16 Institutions Code to determine if the department should recommend  
17 to the court that the person’s commitment for treatment and the  
18 underlying criminal charges be dismissed for compassionate  
19 release.

20 SEC. 3. Section 2977 is added to the Penal Code, to read:

21 2977. A person in the care of the State Department of State  
22 Hospitals because he or she is a mentally disordered ~~offender~~  
23 *offender, including a person who is found not guilty by reason of*  
24 *insanity*, may be eligible for compassionate release pursuant to  
25 Section 4146 of the Welfare and Institutions Code. In any case in  
26 which the criteria for compassionate release apply, the State  
27 Department of State Hospitals shall follow the procedures and  
28 standards in Section 4146 of the Welfare and Institutions Code to  
29 determine if the department should recommend to the court that  
30 the person’s commitment be dismissed for compassionate release.  
31 This section shall apply to persons committed for treatment during  
32 parole and ~~in any commitment made~~ *persons committed* pursuant  
33 to Section 2970. If the person for whom compassionate release is  
34 recommended is on parole, notice shall be given to the Board of  
35 Parole Hearings.

36 SEC. 4. Section 4146 is added to the Welfare and Institutions  
37 Code, to read:

38 4146. (a) ~~(1)–~~This section shall apply in cases ~~where~~ *in which*  
39 a patient has been committed to the department as a mentally  
40 disordered offender, ~~because he or she was~~ *including a person*

1 found not guilty by reason of insanity, or ~~because he or she was a~~  
2 ~~person found incompetent to stand trial or be adjudicated~~ *adjudged*  
3 to punishment.

4 (b) (1) A physician employed by the department who determines  
5 that a patient meets the criteria set forth in subparagraph (A) or  
6 (C) of paragraph (5) shall notify the medical director and the patient  
7 advocate of the prognosis. If the medical director concurs with the  
8 diagnosis, he or she shall immediately notify the Director of State  
9 Hospitals. Within 72 hours of receiving notification, the *medical*  
10 director or the *medical* director's designee shall notify the patient  
11 of the discharge procedures under this section and obtain the  
12 patient's consent for discharge. The *medical* director or *the medical*  
13 director's designee shall arrange for the patient to designate a  
14 family member or other outside agent to be notified as to the  
15 patient's medical condition, prognosis, and release procedures  
16 under this section. If the patient is unable to designate a family  
17 member or other outside agent, the *medical* director or the *medical*  
18 director's designee shall contact any emergency contact listed, or  
19 the patient advocate if no contact is listed.

20 (2) The *medical* director or the *medical* director's designee shall  
21 provide the patient and his or her family member, agent, emergency  
22 contact, or patient advocate with updated information throughout  
23 the release process with regard to the patient's medical condition  
24 and the status of the patient's release proceedings, including the  
25 discharge plan. A patient shall not be released unless the discharge  
26 plan verifies placement for the patient upon release.

27 (3) The patient or his or her family member or designee may  
28 contact the medical director or *the executive* director at the state  
29 hospital where the patient is located or the Director of State  
30 Hospitals to request consideration for a recommendation from the  
31 *medical* director or *the medical* director's designee to the court  
32 that the patient's commitment be dismissed for compassionate  
33 release and the patient released from the department facility.

34 (4) Upon receipt of a notification or request pursuant to  
35 paragraph (1) or (3), respectively, the Director of State Hospitals  
36 may recommend to the court that the patient's commitment be  
37 dismissed for compassionate release and the patient released from  
38 the department facility.

39 (5) The court shall have the discretion to dismiss the  
40 commitment for compassionate release and release the patient if

1 the court finds that the facts described in subparagraphs (A) and  
2 (B) or subparagraphs (B) and (C) exist:

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

7 (B) The conditions under which the patient would be released  
8 or receive treatment do not pose a threat to public safety.

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

13 (c) Within 10 days of receipt of a recommendation for release  
14 by the director, the court shall hold a noticed hearing to consider  
15 whether the patient's commitment should be dismissed and the  
16 patient released.

17 (d) A recommendation for dismissal submitted to the court shall  
18 include at least one medical evaluation, a discharge plan, a  
19 postrelease plan for the relocation and treatment of the patient,  
20 and the physician's and medical director's determination that the  
21 patient meets the criteria set forth in subparagraph (A) or (C) of  
22 paragraph (5) of subdivision (b). The court shall order the medical  
23 director to send copies of all medical records reviewed in  
24 developing the recommendation to all of the following parties:

25 (1) The district attorney of the county from which the patient  
26 was committed.

27 (2) ~~In the case of~~ *If the patient is* a mentally disordered offender  
28 on parole, the district attorney of the county from which the patient  
29 was committed to the state prison.

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

32 (4) ~~In the case of~~ *If the patient is* a mentally disordered offender  
33 on parole, the public defender of the county from which the patient  
34 was committed to the state prison, if one is available, or the  
35 patient's private attorney, if applicable.

36 (5) If the patient is a mentally disordered offender on parole,  
37 the Board of Parole Hearings.

38 (6) If the patient is on mandatory supervision or postrelease  
39 community supervision and has been found incompetent to be

1 adjudged to punishment, the county entity designated to supervise  
2 him or her.

3 (e) (1) The matter shall be heard before the same court that  
4 originally committed the patient, if possible.

5 (2) If the patient is a mentally disordered offender on parole  
6 and was committed for treatment by the Board of Parole Hearings,  
7 the matter shall be heard by the court that committed the patient  
8 to the state prison for the underlying conviction, if possible.

9 (f) If the court approves the recommendation for dismissal and  
10 release, the patient's commitment shall be dismissed and the patient  
11 shall be released by the department within 72 hours of receipt of  
12 the court's order, unless a longer time period is requested by the  
13 director and approved by the court.

14 (g) The *executive director of the state hospital* or his or her  
15 designee shall ensure that upon release, the patient has each of the  
16 following in his or her possession, or the possession of the patient's  
17 representative:

18 (1) A discharge plan.

19 (2) A discharge medical summary.

20 (3) Medical records.

21 (4) Identification.

22 (5) All necessary medications.

23 (6) Any property belonging to the patient.

24 (h) After discharge, any additional records shall be sent to the  
25 patient's forwarding address.

26 (i) The ~~director~~ *Director of State Hospitals* may adopt  
27 regulations to implement this section. The adoption of regulations  
28 for the implementation of this section by the department is exempt  
29 from the Administrative Procedure Act (Chapter 3.5 (commencing  
30 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
31 Government Code).

32 (j) Nothing in this section shall preclude a patient who is  
33 released pursuant to this section from being committed to a state  
34 hospital under the same commitment or another commitment.