

AMENDED IN ASSEMBLY JUNE 23, 2016

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AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 4, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 955

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

February 4, 2016

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, *or a* 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 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

1 may order the defendant placed on outpatient status pursuant to
2 Title 15 (commencing with Section 1600) of Part 2.

3 (b) Prior to making the order directing that the defendant be
4 committed to the State Department of State Hospitals or other
5 treatment facility or placed on outpatient status, the court shall
6 order the community program director or a designee to evaluate
7 the defendant and to submit to the court within 15 judicial days of
8 the order a written recommendation as to whether the defendant
9 should be placed on outpatient status or committed to the State
10 Department of State Hospitals or other treatment facility. A person
11 shall not be admitted to a state hospital or other treatment facility
12 or placed on outpatient status under this section without having
13 been evaluated by the community program director or a designee.
14 If, however, it appears to the court that the sanity of the defendant
15 has been recovered fully, the defendant shall be remanded to the
16 custody of the sheriff until the issue of sanity has been finally
17 determined in the manner prescribed by law. A defendant
18 committed to a state hospital or other treatment facility or placed
19 on outpatient status pursuant to Title 15 (commencing with Section
20 1600) of Part 2 shall not be released from confinement, parole, or
21 outpatient status unless and until the court that committed the
22 person, after notice and hearing, finds and determines that the
23 person's sanity has been restored, or meets the criteria for release
24 pursuant to Section 4146 of the Welfare and Institutions Code.
25 Nothing in this section prevents the transfer of the patient from
26 one state hospital to any other state hospital by proper authority.
27 Nothing in this section prevents the transfer of the patient to a
28 hospital in another state in the manner provided in Section 4119
29 of the Welfare and Institutions Code.

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

1 Hospitals or to another public or private treatment facility approved
2 by the community program director. If either the defendant or the
3 prosecuting attorney chooses to contest either kind of order of
4 transfer, a petition may be filed in the court requesting a hearing,
5 which shall be held if the court determines that sufficient grounds
6 exist. At that hearing, the prosecuting attorney or the defendant
7 may present evidence bearing on the order of transfer. The court
8 shall use the same procedures and standards of proof as used in
9 conducting probation revocation hearings pursuant to Section
10 1203.2.

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

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

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

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

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

30 (4) State summary criminal history information.

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

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

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

37 (8) Any medical records.

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

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

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

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

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

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

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

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

39 4146. (a) This section shall apply in cases in which a patient
40 has been committed to the department as a mentally disordered

1 offender, including a person found not guilty by reason of insanity,
2 or a person found incompetent to stand trial or be adjudged to
3 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 *conditionally* dismissed for
33 compassionate release and the patient released from the department
34 facility.

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

1 (5) The court shall have the discretion to *conditionally* dismiss
2 the commitment for compassionate release and release the patient
3 if the court finds that the facts described in subparagraphs (A) and
4 (B) or subparagraphs (B) and (C) exist:

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

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

11 (C) The patient is permanently medically incapacitated ~~and~~
12 ~~requires 24-hour total care, with a medical condition that renders~~
13 ~~him or her permanently unable to perform activities of basic daily~~
14 ~~living and results in the patient requiring 24-hour total care,~~
15 ~~including, but not limited to, coma, persistent vegetative state,~~
16 ~~brain death, ventilator-dependency, or loss of control of muscular~~
17 ~~or neurological function, the incapacitation did not exist at the~~
18 ~~time of the original commitment, and the medical director~~
19 responsible for the patient's care and the Director of State Hospitals
20 both certify that the patient is incapable of receiving mental health
21 treatment.

22 (c) Within 10 days of receipt of a recommendation for release
23 by the director, the court shall hold a noticed hearing to consider
24 whether the patient's commitment should be *conditionally*
25 dismissed and the patient released.

26 (d) A recommendation for *conditional* dismissal submitted to
27 the court shall include at least one medical evaluation, a discharge
28 plan, a postrelease plan for the relocation and treatment of the
29 patient, and the physician's and medical director's determination
30 that the patient meets the criteria set forth in subparagraph (A) or
31 (C) of paragraph (5) of subdivision (b). The court shall order the
32 medical director to send copies of all medical records reviewed in
33 developing the recommendation to all of the following parties:

34 (1) The district attorney of the county from which the patient
35 was committed.

36 (2) If the patient is a mentally disordered offender on parole,
37 the district attorney of the county from which the patient was
38 committed to the state prison.

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

1 (4) If the patient is a mentally disordered offender on parole,
2 the public defender of the county from which the patient was
3 committed to the state prison, if one is available, or the patient's
4 private attorney, if applicable.

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

7 (6) If the patient is on mandatory supervision or postrelease
8 community supervision and has been found incompetent to be
9 adjudged to punishment, the county entity designated to supervise
10 him or her.

11 (e) (1) The matter shall be heard before the same ~~court~~ *judge*
12 that originally committed the patient, if possible.

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

17 (f) If the court approves the recommendation for *conditional*
18 dismissal and release, the patient's commitment shall be
19 *conditionally* dismissed and the patient shall be released by the
20 department within 72 hours of receipt of the court's order, unless
21 a longer time period is requested by the director and approved by
22 the court.

23 (g) The executive director of the state hospital or his or her
24 designee shall ensure that upon release, the patient has each of the
25 following in his or her possession, or the possession of the patient's
26 representative:

27 (1) A discharge plan.

28 (2) A discharge medical summary.

29 (3) Medical records.

30 (4) Identification.

31 (5) All necessary medications.

32 (6) Any property belonging to the patient.

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

35 (i) The Director of State Hospitals may adopt regulations to
36 implement this section. The adoption of regulations for the
37 implementation of this section by the department is exempt from
38 the Administrative Procedure Act (Chapter 3.5 (commencing with
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code).

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

4 *(j) For the purposes of this section, if the commitment order is*
5 *conditionally dismissed, it may be reinstated pursuant to*
6 *regulations promulgated in accordance with subdivision (i).*

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