

## Senate Bill No. 955

### CHAPTER 715

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.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 955, 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 to be 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.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1026 of the Penal Code is amended to read:

1026. (a) If a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only the other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury finds the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in

the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding is that the defendant was insane at the time the offense was committed, the court, unless it appears to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be committed to the State Department of State Hospitals for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status pursuant to 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. This section does not prohibit the transfer of the patient from one state hospital to any other state hospital by proper authority. This section does not prohibit 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 prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing, which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.

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

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

- (1) The commitment order, including a specification of the charges.
- (2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.
- (3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.
- (4) State summary criminal history information.
- (5) Any arrest reports prepared by the police department or other law enforcement agency.
- (6) Any court-ordered psychiatric examination or evaluation reports.
- (7) The community program director's placement recommendation report.
- (8) Any medical records.

(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.

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

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

1370.015. A person committed to the care of the State Department of State Hospitals because he or she is incompetent to stand trial or to be adjudged to punishment is eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if the department should

recommend to the court that the person's commitment for treatment and the underlying criminal charges be suspended for compassionate release.

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

2977. A person committed to the care of the State Department of State Hospitals because he or she is a mentally disordered offender, including a person who is found not guilty by reason of insanity, is eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if the department should recommend to the court that the person's commitment be suspended for compassionate release. This section applies to persons committed for treatment during parole and persons committed pursuant to Section 2970. If the person for whom compassionate release is recommended is on parole, notice shall be given to the Board of Parole Hearings.

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

4146. (a) This section applies in cases in which a patient has been committed to the department as a mentally disordered offender, including a person found not guilty by reason of insanity, or a person found incompetent to stand trial or be adjudged to punishment.

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

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

(3) The patient or his or her family member or designee may contact the medical director or the executive director at the state hospital where the patient is located or the Director of State Hospitals to request consideration for a recommendation from the medical director or the medical director's

designee to the court that the patient's commitment be suspended for compassionate release and the patient released from the department facility.

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

(5) The court has the discretion to suspend the commitment for compassionate release and release the patient if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A discharge plan.

(2) A discharge medical summary.

(3) Medical records.

(4) Identification.

(5) All necessary medications.

(6) Any property belonging to the patient.

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

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

(j) For the purposes of this section, a patient whose commitment has been suspended for compassionate release shall not be considered to be under the custody of, or the responsibility of, the State Department of State Hospitals.

(k) If a patient's commitment order is suspended pursuant to this section, it may be reinstated by the court pursuant to a finding by the State Department of State Hospitals that the patient's condition has changed such that he or she poses a threat to public safety, or no longer meets the criteria for compassionate release described in subparagraph (A) or (C) of paragraph (5) of subdivision (b).

(l) The State Department of State Hospitals, in consultation with relevant stakeholders, including, but not limited to, local law enforcement and correctional officials, shall promulgate regulations in accordance with subdivision (i) to establish a process for petitioning the court for reinstatement of a suspended commitment order, pursuant to subdivision (k).