

AMENDED IN ASSEMBLY JUNE 27, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1295

Introduced by Senator Nielsen

February 19, 2016

An act to amend Section 2962 of the Penal Code, relating to mentally ill prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1295, as amended, Nielsen. Mentally ill prisoners.

Existing law requires, as a condition of parole, a prisoner who has a severe mental disorder that is not in remission and who meets specified criteria to be treated by the State Department of State Hospitals and provided the necessary treatment. In order for that commitment to occur, existing law requires, among other criteria, that the severe mental disorder be one of the causes of, or an aggravating factor in, the commission of the crime, as defined, for which the prisoner was sentenced to prison. Existing law also requires the prisoner to have been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release. Existing law establishes procedures for the evaluation of a prisoner under these provisions by specified health practitioners of the State Department of State Hospitals and the Department of Corrections and Rehabilitation.

This bill would authorize the use of certain documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals.

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 2962 of the Penal Code is amended to
2 read:

3 2962. As a condition of parole, a prisoner who meets the
4 following criteria shall be provided necessary treatment by the
5 State Department of State Hospitals as follows:

6 (a) (1) The prisoner has a severe mental disorder that is not in
7 remission or that cannot be kept in remission without treatment.

8 (2) The term “severe mental disorder” means an illness or
9 disease or condition that substantially impairs the person’s thought,
10 perception of reality, emotional process, or judgment; or which
11 grossly impairs behavior; or that demonstrates evidence of an acute
12 brain syndrome for which prompt remission, in the absence of
13 treatment, is unlikely. The term “severe mental disorder,” as used
14 in this section, does not include a personality or adjustment
15 disorder, epilepsy, mental retardation or other developmental
16 disabilities, or addiction to or abuse of intoxicating substances.

17 (3) The term “remission” means a finding that the overt signs
18 and symptoms of the severe mental disorder are controlled either
19 by psychotropic medication or psychosocial support. A person
20 “cannot be kept in remission without treatment” if during the year
21 prior to the question being before the Board of Parole Hearings or
22 a trial court, he or she has been in remission and he or she has been
23 physically violent, except in self-defense, or he or she has made
24 a serious threat of substantial physical harm upon the person of
25 another so as to cause the target of the threat to reasonably fear
26 for his or her safety or the safety of his or her immediate family,
27 or he or she has intentionally caused property damage, or he or
28 she has not voluntarily followed the treatment plan. In determining
29 if a person has voluntarily followed the treatment plan, the standard
30 shall be whether the person has acted as a reasonable person would
31 in following the treatment plan.

32 (b) The severe mental disorder was one of the causes of, or was
33 an aggravating factor in, the commission of a crime for which the
34 prisoner was sentenced to prison.

1 (c) The prisoner has been in treatment for the severe mental
2 disorder for 90 days or more within the year prior to the prisoner's
3 parole or release.

4 (d) (1) Prior to release on parole, the person in charge of treating
5 the prisoner and a practicing psychiatrist or psychologist from the
6 State Department of State Hospitals have evaluated the prisoner
7 at a facility of the Department of Corrections and Rehabilitation,
8 and a chief psychiatrist of the Department of Corrections and
9 Rehabilitation has certified to the Board of Parole Hearings that
10 the prisoner has a severe mental disorder, that the disorder is not
11 in remission, or cannot be kept in remission without treatment,
12 that the severe mental disorder was one of the causes or was an
13 aggravating factor in the prisoner's criminal behavior, that the
14 prisoner has been in treatment for the severe mental disorder for
15 90 days or more within the year prior to his or her parole release
16 day, and that by reason of his or her severe mental disorder the
17 prisoner represents a substantial danger of physical harm to others.
18 For prisoners being treated by the State Department of State
19 Hospitals pursuant to Section 2684, the certification shall be by a
20 chief psychiatrist of the Department of Corrections and
21 Rehabilitation, and the evaluation shall be done at a state hospital
22 by the person at the state hospital in charge of treating the prisoner
23 and a practicing psychiatrist or psychologist from the Department
24 of Corrections and Rehabilitation.

25 (2) If the professionals doing the evaluation pursuant to
26 paragraph (1) do not concur that (A) the prisoner has a severe
27 mental disorder, (B) that the disorder is not in remission or cannot
28 be kept in remission without treatment, or (C) that the severe
29 mental disorder was a cause of, or aggravated, the prisoner's
30 criminal behavior, and a chief psychiatrist has certified the prisoner
31 to the Board of Parole Hearings pursuant to this paragraph, then
32 the Board of Parole Hearings shall order a further examination by
33 two independent professionals, as provided for in Section 2978.

34 (3) If at least one of the independent professionals who evaluate
35 the prisoner pursuant to paragraph (2) concurs with the chief
36 psychiatrist's certification of the issues described in paragraph (2),
37 this subdivision shall be applicable to the prisoner. The
38 professionals appointed pursuant to Section 2978 shall inform the
39 prisoner that the purpose of their examination is not treatment but
40 to determine if the prisoner meets certain criteria to be involuntarily

1 treated as a mentally disordered offender. It is not required that
2 the prisoner appreciate or understand that information.

3 ~~(4) The introduction into evidence of a certified copy of the~~
4 ~~chief psychiatrist's certification prepared pursuant to paragraph~~
5 ~~(2) shall create a rebuttable presumption that the 90 days or more~~
6 ~~of treatment required by subdivision (c) has been provided.~~

7 (e) The crime referred to in subdivision (b) meets both of the
8 following criteria:

9 (1) The defendant received a determinate sentence pursuant to
10 Section 1170 for the crime.

11 (2) The crime is one of the following:

12 (A) Voluntary manslaughter.

13 (B) Mayhem.

14 (C) Kidnapping in violation of Section 207.

15 (D) Any robbery wherein it was charged and proved that the
16 defendant personally used a deadly or dangerous weapon, as
17 provided in subdivision (b) of Section 12022, in the commission
18 of that robbery.

19 (E) Carjacking, as defined in subdivision (a) of Section 215, if
20 it is charged and proved that the defendant personally used a deadly
21 or dangerous weapon, as provided in subdivision (b) of Section
22 12022, in the commission of the carjacking.

23 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a)
24 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
25 262.

26 (G) Sodomy by force, violence, duress, menace, or fear of
27 immediate and unlawful bodily injury on the victim or another
28 person.

29 (H) Oral copulation by force, violence, duress, menace, or fear
30 of immediate and unlawful bodily injury on the victim or another
31 person.

32 (I) Lewd acts on a child under 14 years of age in violation of
33 Section 288.

34 (J) Continuous sexual abuse in violation of Section 288.5.

35 (K) The offense described in subdivision (a) of Section 289
36 where the act was accomplished against the victim's will by force,
37 violence, duress, menace, or fear of immediate and unlawful bodily
38 injury on the victim or another person.

39 (L) Arson in violation of subdivision (a) of Section 451, or arson
40 in violation of any other provision of Section 451 or in violation

1 of Section 455 where the act posed a substantial danger of physical
2 harm to others.

3 (M) Any felony in which the defendant used a firearm which
4 use was charged and proved as provided in Section 12022.5,
5 12022.53, or 12022.55.

6 (N) A violation of Section 18745.

7 (O) Attempted murder.

8 (P) A crime not enumerated in subparagraphs (A) to (O),
9 inclusive, in which the prisoner used force or violence, or caused
10 serious bodily injury as defined in paragraph (4) of subdivision (f)
11 of Section 243.

12 (Q) A crime in which the perpetrator expressly or impliedly
13 threatened another with the use of force or violence likely to
14 produce substantial physical harm in such a manner that a
15 reasonable person would believe and expect that the force or
16 violence would be used. For purposes of this subparagraph,
17 substantial physical harm shall not require proof that the threatened
18 act was likely to cause great or serious bodily injury.

19 (f) For purposes of meeting the criteria set forth in this section,
20 the existence or nature of the crime, as defined in paragraph (2)
21 of subdivision (e), for which the prisoner has been convicted may
22 be shown with documentary evidence. The details underlying the
23 commission of the offense that led to the conviction, including the
24 use of force or violence, causing serious bodily injury, or the threat
25 to use force or violence likely to produce substantial physical harm,
26 may be shown by documentary evidence, including, but not limited
27 to, preliminary hearing transcripts, trial transcripts, probation and
28 sentencing reports, and evaluations by the State Department of
29 State Hospitals.

30 (g) As used in this chapter, “substantial danger of physical harm”
31 does not require proof of a recent overt act.

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