In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **MARK STEVENS,** Defendant and Appellant.

Case No. S209643

Appellate District, Case No. B241356
San Luis Obispo County Superior Court, Case No. F471357
The Honorable Barry T. LaBarbera, Judge

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

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CASES

STATUTES

Respondent, the People, respectfully request that the Court take judicial notice of the following items, each of which are cited in respondent's October 14, 2013 answer brief on the merits and are attached to this request. As discussed below, judicial notice is authorized for each of these items under Evidence Code sections 452, subdivision (c), and by decisions of this Court.

A. Documents Pertaining to the Legislative History of Stats. 1986, c. 858:

1. Raymond E. Mattison, Ernst and Mattisson, letter to Sen. Dan McQuorquodale, April 25, 1986 re Stats. 1986, c. 858 (S.B. 1427).

2. Michael T. LeSage, Law Office of Michael T. LeSage, letter to "Fellow Attorney," May 9, 1986, re S.B. 1427.

3. Honorable William R. Fredman, Superior Court of State of California, San Luis Obispo County, letter to Sen. Dan McQuorquodale, April 3, 1986, re S.B. 1427.

4. Honorable William E. Jensen, Superior Court of State of California, Solano County, letter to Sen. Dan McQuorquodale, March 27, 1986, re S.B. 1427.

B. Documents Pertaining to the Legislative History of Stats. 1987, c. 687:

5. Legis. Counsel's Digest, Sen. Bill No. 425, 687 Stats. 1987 (1987-1988 Reg. Sess.), Summary Dig.

6. Sen. Com. on Judiciary, Analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.) as amended May 4, 1987.

7. Assem. Com. on Public Safety, Analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.) as amended May 4, 1987.

8. Assem. Comm. on Public Safety, Amendment analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.).

9. Daphne L. Macklin, American Civil Liberties Union, letter to Sen. Dan McQuorquodale, July 14, 1987.

10. David Nagler, California Attorneys for Criminal Justice, letter to Assemblyman Larry Stirling, July 10, 1987.

11. D. Michael O'Connor, Calif. Department of Mental Health, letter for Sen. Dan McQuorquodale, July 10, 1987.

12. California Department of Mental Health, Health and Welfare Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), June 17, 1987.

13. Board of Prison Terms, Youth and Adult Correctional Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), June 5, 1987.

14. Sen. Dan McQuorquodale, statement re: Sen. Bill No. 425 (1987-1988 Reg. Sess.) to Assembly Committee on Public Safety, July 13, 1987.

15. Sen. Dan McQuorquodale, statement re: Sen. Bill No. 425 (1987-1988 Reg. Sess.) to Assembly Committee on Public Safety [undated].

16. Board of Prison Terms, Youth and Adult Correctional Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), April 27, 1987.

C. Documents Pertaining to the Legislative History of Stats. 1995, c. 761

17. Sen. Com. on Criminal Procedure, Analysis of Sen. Bill No. 34 (1995-1996 Reg. Sess.) as amended April 5, 1995.

18. Sen. Com. on Criminal Procedure, Fact Sheet of Sen. Bill No. 34 (1995-1996 Reg. Sess.).

19. Sen. Steve Peace, California Senate, letter to "All Members of the Legislature," January 11, 1995 re Stats. 1995, c. 761 (S.B. 34).

20. Assem. Com. On Public Safety, Analysis of Sen. Bill No. 34 (1995-1996 Reg. Sess.) as amended May 1, 1995.

D. Documents Pertaining to the Legislative History of Stats. 1996, c. 462

21 Assemblywoman Boland, Assem. Com. on Public Safety, Statement re Assem. Bill No. 3130 (1995-1996 Reg. Sess.).

22. Sen. Com. on Crim. Proc., analysis of Assem. Bill No. 3130 (1995-1996 Reg. Sess.) as amended May 24, 1996.

MEMORANDUM OF POINTS AND AUTHORITIES

JUDICIAL NOTICE OF MATERIALS FROM THE LEGISLATIVE HISTORY OF STATUTES, INCLUDING COMMITTEE REPORTS AND MATTERS CONSIDERED BY THE LEGISLATURE; IS APPROPRIATE UNDER EVID. CODE, § 452, SUBD. (C).

Evidence Code section 452, subdivision (c), *permits* a court to take judicial notice of "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United. States." Furthermore, under Evidence Code section 459, subdivision (a), "The reviewing court may take judicial notice of a matter specified in Section 452."

Based on those provisions, this Court has often taken permissive judicial notice of pertinent matters from the legislative history of statutes as an aid to interpeting the Legislature's intent. (E.g. *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929, & n. 10; *Martin v. Szeto* (2004) 32 Cal.4th 445, 452, fn. 9; *Ste. Marie v. Riverside County Regional Park and Open-Space District* (2009) 46 Cal.4th 282, 291-292, & fn. 6 [granting judicial notice of legislative history of amendment to statute, including enrolled bill report by Office of Local Government Affairs, bill analysis by Department of Parks and Recreation, and analyses by Senate committees].

> [I]t is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be

considered when the meaning of a statute is uncertain. [Citations.] The United States Supreme Court has long followed a similar practice in using committee reports as an aid in construing federal legislation. [Citations.] The rationale for considering committee reports when interpreting statutes is similar to the rationale for considering voter materials when construing an initiative measure. In both cases it is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it.

(*Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.)

Each of the attached documents is a true copy of materials obtained by trained librarians employed by the California Attorney General's Office "from the entire history pertaining to the statute as presented, chaptered, and archived as public records by the California Secretary of State, California Legislative Counsel, and other sources of legislative history." (Decl. of Joel Tochterman ,¶¶ III, IV, V.) These materials were among those considered by legislators in deliberating the enactment of amendments to the Mentally Disordered Offenders Act or Sexually Violent Predators Act. (But see *People v. Garcia* (2002) 28 Cal.4th 1166, 1176, fn. 5 [declining to judicially notice of authoring legislator's letters in the absence of an indication the Legislature as a whole considered them]; *In re Marriage of Pendleton and Fireman* (2000) 24 Cal.4th 39, 47, fn. 6 [declining to judicially notice an uncertified letter from the Family Law Section of the State Bar to an assemblymember opposing an aspect of a bill]; *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5.) Their relevance to the issues presented in this case is explained in respondent's answer brief on the merits.

Accordingly, this Court may permissively take judicial notice of each of the attached items. Respondent respectfully requests that the Court do so.

Dated: March 7, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
STEVEN D. MATTHEWS
Supervising Deputy Attorney General

SCOTT A. TARYLE
Supervising Deputy Attorney General
Attorneys for Respondent

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Declaration of

JOEL TOCHTERMAN

DECLARATION OF JOEL TOCHTERMAN

I, Joel Tochterman, declare

I. I make this declaration upon personal knowledge and if requested, I am willing to to testify the facts stated here.

II. I am a librarian for the California Department of Justice, Office of the Attorney General, in Sacramento. I have been trained and am familiar with our office's methods for researching and compiling legislative histories. My job duties regularly include collecting legislative history materials for attorneys in this office. I am also custodian of the records retained in the library's files, including legislative histories compiled by our office's trained librarian.

III. Trained librarians in our office, including me, regularly compile legislative histories when requested to do so by attorneys in the Attorney General's Office. These librarians compile legislative histories of California statutes from the entire history pertaining to the statute as presented, chaptered, and archived by the California Secretary of State, California Legislative Counsel, and other sources of legislative history. After a legislative history has been complied, we add it to our collection of legislative histories, and retain it in the library's files.

IV. On or about July 26, 2013, I located previously prepared legislative histories compiled by a librarian of the Office of the Attorney General for Senate Bill 1427 (Stats. 1986, ch. 858); Senate Bill 425 (Stats. 1987, ch. 687); Senate Bill 34 (Stats. 1995, ch. 761); Assembly Bill 3130 (Stats. 1996, ch. 462). Accompanying my declaration are the following copies of selected documents that were part of those legislative histories.

A. The following documents are true copies of documents from the legislative history materials for Senate Bill 1427 (Stats. 1986, ch. 858):

1. Raymond E. Mattison, Ernst and Mattisson, letter to Sen. Dan McQuorquodale, April 25, 1986 re Stats. 1986, c. 858 (S.B. 1427).

2. Michael T. LeSage, Law Office of Michael T. LeSage, letter to "Fellow Attorney," May 9, 1986, re S.B. 1427.

3. Honorable William R. Fredman, Superior Court of State of California, San Luis Obispo County, letter to Sen. Dan McQuorquodale, April 3, 1986, re S.B. 1427.

4. Honorable William E. Jensen, Superior Court of State of California, Solano County, letter to Sen. Dan McQuorquodale, March 27, 1986, re S.B. 1427.

B. The following documents are true copies of documents from the legislative history materials for Senate Bill 425 (Stats. 1987, ch. 687):

5. Legis. Counsel's Digest, Sen. Bill No. 425, 687 Stats. 1987 (1987-1988 Reg. Sess.), Summary Dig.

6. Sen. Com. on Judiciary, Analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.) as amended May 4, 1987.

7. Assem. Com. on Public Safety, Analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.) as amended May 4, 1987.

8. Assem. Comm. on Public Safety, Amendment analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.).

9. Daphne L. Macklin, American Civil Liberties Union, letter to Sen. Dan McQuorquodale, July 14, 1987.

10. David Nagler, California Attorneys for Criminal Justice, letter to Assemblyman Larry Stirling, July 10, 1987.

11. D. Michael O'Connor, Calif. Department of Mental Health, letter for Sen. Dan McQuorquodale, July 10, 1987.

12. California Department of Mental Health, Health and Welfare Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), June 17, 1987.

13. Board of Prison Terms, Youth and Adult Correctional Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), June 5, 1987.

14. Sen. Dan McQuorquodale, statement re: Sen. Bill No. 425 (1987-1988 Reg. Sess.) to Assembly Committee on Public Safety, July 13, 1987.

15. Sen. Dan McQuorquodale, statement re: Sen. Bill No. 425 (1987-1988 Reg. Sess.) to Assembly Committee on Public Safety [undated].

16. Board of Prison Terms, Youth and Adult Correctional Agency, analysis of Sen. Bill No. 425 (1987-1988 Reg. Sess.), April 27, 1987.

C. The following documents are true copies of documents from the legislative history materials for Senate Bill 34 (Stats. 1995, ch. 761):

17. Sen. Com. on Criminal Procedure, Analysis of Sen. Bill No. 34 (1995-1996 Reg. Sess.) as amended April 5, 1995.

18. Sen. Com. on Criminal Procedure, Fact Sheet of Sen. Bill No. 34 (1995-1996 Reg. Sess.).

19. Sen. Steve Peace, California Senate, letter to "All Members of the Legislature," January 11, 1995 re Stats. 1995, c. 761 (S.B. 34).

20. Assem. Com. On Public Safety, Analysis of Sen. Bill No. 34 (1995-1996 Reg. Sess.) as amended May 1, 1995.

D. The following documents are true copies of documents from the legislative history materials for Assembly Bill 3130 (Stats. 1996, ch. 462):

21 Assemblywoman Boland, Assem. Com. on Public Safety, Statement re Assem. Bill No. 3130 (1995-1996 Reg. Sess.).

22. Sen. Com. on Crim. Proc., analysis of Assem. Bill No. 3130 (1995-1996 Reg. Sess.) as amended May 24, 1996.

V. The documents listed above are true copies of the originals obtained by the designated official, public sources in California, except that, for readability purposes, pages may have been enlarged.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true.

Executed in Sacramento, California on March 5, 2014.

Joel Tochterman

JOEL TOCHTERMAN

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EXHIBIT A

1

The documents following this page were photocopied from the files of

Senator Dan McCorquodale,

author of this legislation.

ERNST AND MATTISON
A Law Corporation
1020 Palm Street
San Luis Obispo, California 93401
(805) 541-0300

Don A. Ernst
Raymond E. Mattison
Gail S. Taylor

MAY 2 1986

April 25, 1986

Honorable Dan McCorquodale
Senator, 12th Senatorial District
State Capitol
Sacramento, CA 95814

Re: Senate Bill 1296 (Penal Code Section 2960)

Dear Senator McCorquodale:

I urge you to modify Penal Code Section 2960 (SB 1296) because of its potential devastating impact on San Luis Obispo County. As you know, San Luis Obispo County is dealing with a six-Judge caseload with only four Superior Court Judges. As of yet, we have been unsuccessful in obtaining passage of AB 3087 which would authorize a new Judgeship. Even with the additional Judgeship, our civil and criminal backlog will continue to grow.

However, once Penal Code Section 2960 goes into effect, we will be overwhelmed with jury trials by prisoners seeking a release. As you know, Section 2960 will require the Court in the County in which the prisoner is incarcerated to provide a jury trial to any prisoner who protests a commitment by the Board of Prison Terms.

My own study of this issue convinces me that at least fifty percent of all prisoners will demand the jury trial provided them by law. This will simply overwhelm our Judicial system in San Luis Obispo County. We are already suffering from the impact of litigation arising from the California Men's Colony, the Atascadero State Hospital, and the Diablo Canyon Nuclear project.

This Bill will now prevent any real "day in Court" for any civil litigant in San Luis Obispo County. We are already experiencing great difficulties in obtaining Courtrooms and trial dates for the victims of accidents, insurance practices, and violation of consumer protection laws. As my own practice is concentrated in these areas, I have seen first hand that the lack of available Courtrooms in San Luis Obispo has a direct and oppressive effect on the average civil litigant.

It would appear that a simple amendment to the bill would provide the necessary relief, so that the burden of this otherwise salutary legislation will not fall unfairly on two of the smallest of

California Counties. I suggest a change to Section 2966(b), replacing the wording on page 14, lines 4 and 5 ... "...the County in which he or she is incarcerated or is being treated..." with new language providing "...the County from which he or she was commited..."

We urge your reconsideration of the unforseen impact that this Penal Code Section will have on our local community. My colleagues and I would be glad to discuss this matter further and provide you with any additional information you require.

Very truly yours,

RAYMOND E. MATTISON

REM:t
cc Honorable Kenneth L. Maddy
Honorable Eric Seastrand

EXHIBIT A

2

The documents following this page were photocopied from the files of

Senator Dan McCorquodale,

author of this legislation.

File w/SB 1895

MICHAEL T LESAGE

LAW OFFICES
MICHAEL T. LESAGE
A PROFESSIONAL CORPORATION
620 13TH STREET
P. O. BOX 306
PASO ROBLES, CALIFORNIA 93447-0306
TELEPHONE 238-3484

May 9, 1986

Dear Fellow Attorney:

A critical problem faces the court system of San Luis Obispo County. Beginning on July 1st of this year, a new burden placed on this County by the State Legislature could effectively prevent the trial of all civil cases in this County. One of the major reasons I have chosen to run against Senator Ken Maddy for the 14th District California Senate seat is the lack of representation that he has provided to San Luis Obispo and our judicial system. Senate Bill 1296, Penal Code Section 2960, goes into effect on July 1st of this year. Senator Maddy voted for this bill which passed in September of 1985.

This bill requires a jury trial in the county of incarceration to provide a method of reevaluating the mental condition of dangerous criminals who have reached the end of their determined sentence. Under the bill, dangerous criminals who are eligible for parole can be required to serve their parole time in a mental institution such as Atascadero State Hospital if the jury determines that the parolee is still capable of the same violent act due to a mental condition which has not changed since the original crime was committed. The bill requires that the jury trial occur in the county of incarceration meaning San Luis Obispo County, instead of the county of origin.

This County is not equipped to handle the added jury trials that will be required under this bill, and most likely those prisoners who are held over will be transferred to Atascadero State Hospital creating added burdens on that institution. This bill requires a jury trial within 30 days prior to the scheduled release date with priority over all civil matters. These special proceedings will wipe out our civil trial calendar entirely and severely reduce our ability to process our normal criminal and civil workload. There were 53 jury trials in this County last year, and by the most conservative estimate this bill will produce over 50 additional jury trials per year for San Luis Obispo County Courts. These jury trials should occur in the county of origin and not in San Luis Obispo County. Senator Maddy's representation of the courts in this County needs thorough investigation. Senator Maddy is not protecting this District by supporting legislation that does not require trial in the county of origin.

I am asking you as a fellow attorney to help me correct this

problem.

I believe that through my Senate campaign, we can bring enough publicity and public outcry to produce an effective change. Please send whatever contribution you can to help me get this problem to the public and to promote an effective solution.

This is a nonpartisan fight. Your support in fighting this issue is extremely critical to the continuation of justice and civil cases within this County. Through my campaign, I intend to continue to address this issue and promote new legislation.

Sincerely,

Michael T. LeSage

MICHAEL T. LeSAGE

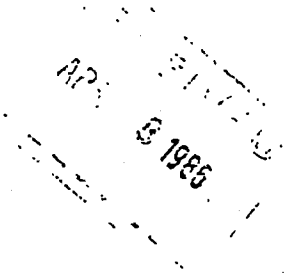
EXHIBIT A

3

DIRECT ALL REPLIES TO
COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CA 93408
(805) 549-5420

CHAMBERS OF
SUPERIOR COURT
STATE OF CALIFORNIA
SAN LUIS OBISPO COUNTY
WILLIAM R. FREDMAN, JUDGE
SAN LUIS OBISPO, CALIFORNIA

April 3, 1986



Honorable Dan McCorquodale
Senator, Twelfth Senatorial District
State Capitol
Sacramento, California 95814

Re: Penal Code Section 2960 (Senate Bill 1296)

Dear Senator McCorquodale:

I write on behalf of myself and the three other superior court judges of San Luis Obispo County. We are deeply concerned with the potential impact of the above legislation on the citizens and courts of our county.

First, some demographics. Our basically rural county has been graced with a number of state institutions. We are the host county for Atascadero State Hospital, California Men's Colony (the most populated prison in the western world), El Paso de Robles School for Boys (CYA), and, on the educational side, Cal Poly. Our population is approximately 190,000 and, by some estimates, we are the fastest growing county in California.

Our last judgeship was approved in January 1976 when our population was 132,500. For the last five years, we have sought a fifth and additional judgeship from the legislature and have been rejected. We have a bill in this year sponsored by our court, the board of supervisors, and our legislators. Despite herculean efforts, we struggle to keep up with our criminal calendars, augmented as they are by the increased workload from the state institutions, and, as you probably realize, the civil business of the courts is heavily backlogged.

In July 1986, Penal Code section 2960 will take effect. We do not quarrel with the salutory purpose of this legislation. Like the other citizens of California, we seek protection from dangerous assaults by the violent mentally ill persons in the state's population. However, we note that this statutory scheme places the burden of implementation, in the first instance, on the county of placement/treatment of this unruly and dangerous prison population.

We are advised that the prisoners who are the focus of Penal Code section 2960 are, or will be, housed in three primary institutions--California Medical Facility at Vacaville (Solano County), California Men's Colony, and Atascadero State Hospital (San Luis Obispo County). Representatives of the Department of Corrections have estimated that the class of dangerous felons affected by the legislation number approximately 750, which is divided pretty evenly between the three mentioned facilities. These inmates, for the most part, come to us from the major population centers--Los Angeles, Orange, San Francisco, San Diego, Alameda, Contra Costa, and Fresno Counties. It should be noted that none of them hosts any prison facilities.

We are further advised that, based on statistical predicators, it is estimated that at least 50 percent of those selected for processing under section 2960 will choose to resist loss of their parole rights and immediate freedom. This means that of those presently in the 2960 pipeline, 375 will opt for a chance of freedom through demand for trial by jury. As a majority of these persons are placed in San Luis Obispo County, even the most conservative estimates result in a predication of more than 50 jury trials per year for San Luis Obispo County courts. These special proceedings will wipe out our civil trial calendar entirely, and severely reduce our ability to process our normal criminal workload.

Of course, these concerns address only our ability to conduct the legal business of the county in a normal manner. They do not address the fiscal aspects involved nor the psychological effect of our county's becoming a dumping ground for the most dangerous persons in the state. Some of these prisoners will bring their families along, and opt for outpatient treatment or parole in our communities.

It is our understanding that Senate Bill 1845, introduced by you in February, addresses technical changes in sections 2960 and 2970, without recognizing the unforeseen inequities existing in the geographical design of the legislation.

It would appear that a simple amendment to the bill would provide the necessary adjustment, in the interest of fairness, so that the burden of this salutory legislation will not fall on two of the smallest of California counties. We suggest a change to proposed section 2966(b), replacing the wording on page 14, lines 4 and 5--"...the county in which he or she is incarcerated or is being treated..." with new language providing "...the county from which he or she was committed...."

We urge your consideration of the unplanned impact that Penal Code section 2960 will have on us, and your taking steps to promote the suggested amendment so that the bill's implementation will proceed in an equitable manner. Should you require additional information, we will be happy to discuss this matter further with you or your staff.

Very truly yours,

WILLIAM R. FREDMAN

WRF/gw
Copies to: Senator Kenneth L. Maddy
Assemblyman Eric Seastrand
Mr. Daniel McCarthy, Director,
Department of Corrections

EXHIBIT A

4

Superior Court of the State of California
County of Solano
Fairfield, California 94533

Chambers of
WILLIAM E. JENSEN
Judge

Hall of Justice
(707) 429-6293

March 27, 1986

State Senator Dan McCorquodale
100 Paseo de San Antonio
#211
San Jose, CA 95113

RE: Senate Bill 1296

Dear Senator McCorquodale:

The purpose of this letter is to express my concern over the effect that the above legislation will have upon the Superior Court of Solano County.

As you are aware, SB1296 amends Section 2960 of the Penal Code. As amended, subdivision (d)(2) of that section provides:

> "A prisoner who disagrees with the determination of the Board of Prison Terms. . . may file in the Superior Court of the county is which he or she is incarcerated or is being treated a petition for hearing . . ."

I am advised that because of this language, almost all of the trials held pursuant to this section will be in either Solano or San Luis Obispo Counties.

The amended language of this section was called to my attention by the staff of the Judicial Council of the State of California. They expressed a concern as to the possible impact that SB1296 might have on the courts of Solano and San Luis Obispo county. With the cooperation and assistance of the Judicial Council staff, two meetings have been held in Solano County with representatives of various governmental agencies to determine the impact of this new legislation on our courts. Figures supplied to us by the Department of Corrections indicate that there are 374 prisoners who as of July 1, 1976 will meet the critiera set forth in SB1296.

How many of these cases will ultimately reach the Superior Courts of San Luis Obispo and Solano County is pure speculation. It is clear that neither county has sufficient courtrooms, judges, prosecutors or defense attorneys to handle the caseload that may be produced by this new legislation.

It was the consenus of the persons attending the meeting, that we should request the Legislature to consider an amendment to this section so that the trial would be held in the Superior Court of the county from which the prisoner was sentenced and to where he will be returning when he is released on parole.

Although we were not aware as to why the Bill was adopted in its present form, we speculated that one of the reasons may well have been the expense that would be incurred in transporting the prisoners back to the county from which they were sentenced. We felt however, Section 2960 (b)(2) provides . . . "the severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison." It will be necessary to bring in witnesses from the original trial, particularly any psychiatrists or psychologists who may have testified. Therefore, the expense of bringing these witnesses to either Solano or San Luis Obispo county would far exceed the cost of transporting the prisoner to the sentencing county. It is my opinion that a more important consideration, is that the safeguards offered by SB1296 may be frustrated if these cases are dumped into counties that do not have the staffing or facilities to handle them. Further, although all of us will endeavor to diligently perform our duties under the law, it is a fact of life, the county where the crime occurred, where the prisoner was tried and sentenced, where the trial prosecutor and sentencing judge reside, where the victim resides and where the prisoner will return when he is paroled, have a far greater interest in the outcome of the proceedings under SB1296.

In conclusion, it was the consensus of those attending these meetings, that if these cases are returned to the sentencing county, this will spread the workload throughout all the courts of the State; that it should not create a significant impact on any single court, and we, the Criminal Justice System, should be able to handle this new caseload with existing staff and facilities.

For the foregoing reasons, it is respectfully requested that SB1845 be amended to include language so that mentally disordered violent offenders will be returned to the sentencing county for trial under the provisions of section 2960 of the Penal Code.

Thank you for your consideration.

Very truly yours,

WILLIAM E. JENSEN
JUDGE OF THE SUPERIOR COURT

WEJ:klf

cc: Senator Barry Keene

Assemblyman Tom Hannigan

EXHIBIT B

5

The first section of this legislative history should include the following items in the order listed:

-- the code sections of interest to the requestor

-- the statute/chaptered version of the legislation

* **-- the legislative counsel's summary digest of the statute**

-- the Senate or Assembly final history of the legislation

-- versions of the legislative bill

prohibiting certain contractual conflicts of interest, in specified circumstances.

Existing law provides for the Medi-Cal program, under which various services, including laboratory services, are provided to qualified low-income persons.

Existing law provides that, prior to July 1, 1987, utilization controls adopted by the State Department of Health Services shall not include a requirement for prior authorization from the department in order to provide portable X-ray services provided in skilled nursing or intermediate care facilities.

This bill would make that prohibition permanent.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 687 (SB 425) McCorquodale. Mentally disordered offenders: treatment.

(1) Under existing law, a communication between a patient and the patient's psychotherapist is a privileged communication, except as specified.

This bill would provide that there is no privileged communication if the psychotherapist is appointed by the Board of Prison Terms, pursuant to specified provisions, to examine a prisoner.

(2) Existing law provides for the placement on outpatient status of mentally disordered criminal offenders, as specified, and refers to that program as the "Conditional Release Program."

This bill would rename that program the "Mental Health Conditional Release Program."

(3) Existing law provides for inpatient or outpatient treatment of certain convicted felons with a severe mental disorder as a condition of parole, and for their continued treatment upon termination of parole or release from prison. Under that law, and prior to release on parole, a chief psychiatrist of the Department of Corrections is required to certify to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

This bill would additionally require that certification to include findings that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison. The bill would also specify evidence which can be used to establish the fact that the prisoner has received treatment for 90 days or more.

(4) Existing law authorizes a prisoner to request a hearing before the Board of Prison Terms for purposes of proving that the prisoner meets specified criteria for treatment by the State Department of Mental Health as a condition of parole. Existing law provides that if the prisoner disagrees with the determination of the board, he or she may file a petition for a hearing in the superior court on whether he or she meets the criteria for treatment by the State Department of Mental Health.

This bill would specify that the superior court hearing shall be for the purpose of determining whether the prisoner, as of the date of the Board of Prison Terms hearing, has met the prescribed criteria for treatment by the department.

Ch. 688 (SB 457) Keene. State Bar of California.

Existing provisions of the State Constitution and statutory law establish the State Bar of California and provide for its powers and duties. An existing statute, operative until January 1, 1988, authorizes the Board of Governors of the State Bar to fix the annual membership fee for active members, for 1987, at $200 for persons admitted to the practice of law for 3 years or longer, $140 for persons admitted for less than 3 years but more than one year, and $110 for persons admitted for less than one year, as specified.

This bill would authorize the Board of Governors to set the annual fee for 1988 at $215, $147, and a sum not exceeding $116, respectively.

The bill also would require the Board of Governors to contract with an independent expert for a study of the State Bar's affirmative action program with regard to its employees, to be submitted to the Committees on Judiciary of each house of the Legislature by September 1, 1988; specify elements to be included in its proposed budget, which

NOTE: Superior numbers appear as a separate section at the end of the digests.

EXHIBIT B

6

The documents following this page were photocopied from the

Senate Judiciary Committee's

file on this legislation.

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session

SB 425 (McCorquodale)
As amended May 4
Hearing: May 13, 1987
Evidence/Penal Codes
TDT

S
B

4
2
5

MENTALLY DISORDERED OFFENDERS

HISTORY

Source: Author

Prior Legislation: SB 1054 (1985) - Chaptered
SB 1296 (1985) - Chaptered
SB 1845 (1985) - Chaptered

Support: Unknown

Opposition: No known

KEY ISSUES

SHOULD THE PSYCHOTHERAPIST APPOINTED BY THE BOARD OF PRISON TERMS TO EXAMINE A PRISONER FOR SERIOUS MENTAL DISORDERS BE EXEMPTED FROM THE GENERAL PSYCHOTHERAPIST PATIENT PRIVILEGE?

SHOULD OTHER TECHNICAL AND CLARIFYING CHANGES BE MADE TO EXISTING LAW REGARDING PAROLE AND TREATMENT OF SERIOUSLY MENTALLY DISORDERED PRISONERS?

PURPOSE

Under existing law, a communication between a patient and the patient's psychotherapist is a privileged communication, except as specified.

This bill would provide that there is no privileged communication if the psychotherapist is appointed by the Board of Prison Terms, pursuant to specified provisions, to examine a prisoner.

Existing law provides for the placement on outpatient status of mentally disordered criminal offenders, as specified, and refers to that program as the Conditional Release Program."

(More)

This bill would rename that program the "Mental Health Conditional Release Program."

Existing law provides for inpatient or outpatient treatment of certain convicted felons with a severe mental disorder, as a condition of parole, and for their continued treatment upon termination of parole or release from prison. Under that law, and prior to release on parole, a chief psychiatrist of the Department of Corrections is required to certify to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

This bill would additionally require that certification to include findings that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison. The bill would also specify evidence which can be used to establish the fact that the prisoner has received treatment for 90 days or more.

The purpose of this bill is to clarify and make technical changes to existing law regarding treatment of mentally disordered prisoners.

COMMENT

1. General rule regarding psychotherapist-patient privilege

The general rule under the evidence code is that except as specifically provided, no person has a privilege to refuse to be a witness or disclose any matter or refuse to produce any writing, object or thing. There is, however, a psychotherapist-patient privilege which allows psychotherapists to refuse to disclose confidential communications between the therapist and patient. An exception to the privilege exists for psychotherapists appointed by the court to examine the patient.

2. No psychotherapist-patient privilege for board appointed therapist

This bill would also except from the existing privilege, any psychotherapist appointed by the Board of Prison Terms to examine a prison inmate to determine if he or she has a

(More)

severe mental disorder which requires mental health treatment.

The rationale for this exception is that the psychotherapist would be appointed by the Board for the purpose of examining, the patient and giving the Board an opinion about whether or not the patient has a serious mental disorder and needs treatment. Thus there would not be a confidential therapist-patient relationship to justify allowing the communications made during the examination to be privileged.

3. Ninety days treatment prior to parole would be required

Under existing law, as a condition of parole, a mentally disordered prisoner who meets specified criteria is required to undergo treatment. One of the criteria is that the prisoner has been in treatment of the disorder for 90 days or more within the year prior to parole or release. A chief psychiatrist of the Department of Corrections is required to certify to the Board that the prisoner meets all the criteria except the 90 day prior treatment. This bill would require the psychiatrist to certify that the prisoner meets the 90 day prior treatment and the use of force, violence or bodily harm requirements.

4. Clarifying amendments

The bill includes two amendments to clarify existing provisions regarding the court hearing a prisoner is entitled to when he disagrees with the Board of Prison Term's determination about whether he meets the treatment criteria.

5. Use of records as evidence of treatment

The bill would also add a provision to existing law authorizing the use of certified records or copies of records concerning the prisoner from any prison, jail, or state hospital, to establish prima facie evidence that the prisoner has received 90 days treatment within the year prior to release.

This provision will preclude the necessity for records custodians to appear in court to authenticate the records.

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EXHIBIT B

7

The documents following this page were photocopied from the files of the

Assembly Committee on

Public Safety.

Date of Hearing: July 13, 1987
Counsel: DeeDee D'Adamo

SB 425

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Larry Stirling, Chair

SB 425 (McCorquodale) - As Amended: May 4, 1987

PRIOR ACTION: Senate Judiciary: 10 ayes; 0 noes
Senate Floor: 37 ayes; 0 noes CONSENT CALENDAR

ISSUES: I. SHOULD TECHNICAL AND CLARIFYING CHANGES BE MADE TO EXISTING LAW REGARDING THE PAROLE AND TREATMENT OF MENTALLY DISORDERED OFFENDERS?

II. SHOULD PSYCHOTHERAPISTS APPOINTED BY THE BOARD OF PRISON TERMS TO EXAMINE A PRISONER FOR SERIOUS MENTAL DISORDERS BE EXEMPTED FROM THE PSYCHOTHERAPIST-PATIENT PRIVILEGE?

DIGEST

Current law:

1) Establishes a Conditional Release Program which authorizes the extended commitment of a parolee for purposes of treatment during his or her parole if certain conditions are met.

2) Requires the Department of Corrections' (CDC) chief psychiatrist to certify that specified criteria is met.

3) Provides that a communication between a patient and the patient's psychotherapist, as defined, is a privileged communication, the contents of which cannot be disclosed, except as specified.

This bill would:

1) Rename the "Conditional Release Program" the "Mental Health Conditional Release Program."

2) Require CDC's chief psychiatrist to certify that the criteria for extended civil commitment has been met.

3) Specify that correctional or mental health facility records can be used to establish the fact that the prisoner has received treatment for 90 days or more prior to his or her release.

4) Provide an exception to the psychotherapist patient privilege when the Board of Prison Terms (BPT) appoints a psychotherapist to examine a prisoner pursuant to the Mental Health Conditional Release Program.

COMMENTS

1) Purpose. According to the author, the purpose of this bill is to clarify and make technical changes to existing law regarding treatment of mentally disordered prisoners.

2) Program Criteria. The Mental Health Conditional Release Program specifies that the following criteria must be met before the special condition of parole can be ordered:

   a) The prisoner has a severe mental disorder.

   b) The disorder cannot be kept in remission without treatment.

   c) The disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

   d) The prisoner was convicted of a violent felony, as specified.

   e) The prisoner has received treatment for 90 days or more prior to release.

3) Certification Process. The Mental Health Conditional Release Program specifies that before a parolee's extended commitment can be authorized, CDC's chief psychiatrist must certify to BPT that the prisoner had a severe mental disorder which cannot be kept in remission and that the disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

   This bill would specify that the chief psychiatrist must additionally certify that the remaining criteria are also met (see COMMENT #2); namely, that the prisoner has been in treatment for 90 days prior to release and that prisoner's commitment offense was a violent offense.

3) Psychotherapist-Patient Privilege. Current law provides that a psychotherapist must refuse to disclose confidential communications with the patient.

   a) Court Appointed Psychotherapists. Current law provides for exceptions to the privilege, including cases in which the psychotherapist was appointed by a court to examine the patient (in not guilty by reason of insanity or incompetent to stand trial cases, for example).

   b) BPT-Appointed Psychotherapists. According to the author's staff, since there is no specified exception to the rule for a board appointed

therapist, appointed therapists may feel that they must assert the privilege since the patient, not the therapist or BPT, is the holder of the privilege. This bill would clarify this issue by providing an exception to the privilege in cases where the psychotherapist was appointed by the BPT pursuant to the Mental Health Conditional Release Program.

c) Rationale. The rationale for this exception is that since the psychotherapist is appointed by BPT for the purpose of examining the patient and giving BPT an opinion about whether or not the patient has a serious mental disorder and needs treatment, there is no confidential therapist-patient relationship to justify allowing the communications made during the examination to be privileged. This bill would parallel the exception for court appointed psychotherapists.

4) Use of Records as Evidence of Treatment. This bill would also add a provision to existing law authorizing the use of certified records or copies of records concerning the prisoner from any prison, jail, or state hospital, to establish prima facie evidence that the prisoner has received 90 days treatment within the year prior to release.

SOURCE: Author

SUPPORT: None on file.

OPPOSITION: None on file.

EXHIBIT B

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Rec'd 6/9 Sent 6/4/87
Due 6/9/87

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Larry Stirling, Chair

1100 J Stret, Room 404
Sacramento, CA 95814
(916) 445-3268

BILL NO. SB 425

AUTHOR: McCorquodale

BILL ANALYSIS WORKSHEET

1) NEED FOR BILL.

a) Please present all the relevant facts (BE SPECIFIC) that demonstrate the need for this bill.

CLEANUP BILL FOR SB 1296 (ch. 1419, 1985) - Mc CORQUODALE.

2) SOURCE AND BACKGROUND OF BILL.

a) Who is the person in your office to contact regarding this bill? (Please provide telephone number.)

PETER SZEGO 5-5441 / ALSO: NED COHEN 2-3519

b) What, if any, person, organization or governmental entity requested introduction of this bill?

SEN. Mc CORQUODALE

c) Has a similar bill been before either this Session or a previous Session of the Legislature? If so, please identify the Session, bill number, and disposition of the bill.

SB 1296 (Mc Corquodale), ch. 1419, 1985. SB 1845 (Mc Corquodale), ch. 858, 1986
SB 1054 (Lockyer), ch. 1418, 1985

d) Has there been any interim committee report on this bill? If so, please identify the report.

NO

e) Please attach copies of any background material in explanation of this bill, or state where such material is available for reference by committee staff.

See attached

f) Please attach copies of letters of support or opposition you have received.

3) AMENDMENTS PRIOR TO HEARING.

a) Do you plan any substantive amendments to this bill prior to hearing?

YES_____ NO ✓

b) If the answer to (a) is "YES" please explain briefly the substance of the amendments being prepared (or attach a copy of the draft langauge which has gone to Legislative Counsel).

4) COSTS IMPOSED BY BILL.

Please estimate the cost or savings to any state or local law enforcement or correctional agency, including the judicial system, imposed by this bill and explain the formula used to estimate the cost or savings.

None

SHALLTE

PLEASE RETURN THIS FORM TO: Darlene E. Blue, Committee Secretary
Assembly Committee on Public Safety
1100 J Street, Room 404
Sacramento, CA 95814

AB 425 (McCorquodale)- (MDO)

1) Author plans on amending bill to:

- require the board appointed psychotherapists to inform the prisoner that the purpose of the examination is to determine criteria under the conditional release program, not for treatment

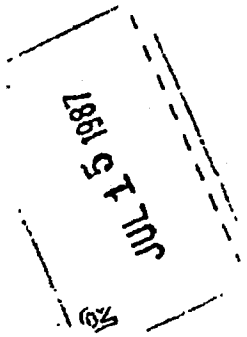
- specify that the prisoner must meet the criteria at the time of the filing of a petition for commitment, rather than the date of the prisoner's parole.

- delete the language which specifies that the prisoner's records can be used to establish a prima facia case that the prisoner received treatment.

EXHIBIT B

9

ACLU
AMERICAN CIVIL LIBERTIES UNION
CALIFORNIA LEGISLATIVE OFFICE
1127 11th Street, Suite 602 □
Sacramento, California 95814
Telephone (916) 442-1036 □



July 14, 1987

Hon. Dan McCorquodale
State Capitol, Room 4032
Sacramento, California 95814

Re: SB 425

Dear Senator McCorquodale:

The ACLU has reviewed the most recent amendments to SB 425 and withdraws its previous opposition to the measure.

We thank you for considering our views in this matter.

Respectfully,

DAPHNE L. MACKLIN
Legislative Advocate

MARJORIE C. SWARTZ
Legislative Advocate

cc: Consultant, Assembly Public Safety Committee

EXHIBIT B

10

california attorneys for criminal justice

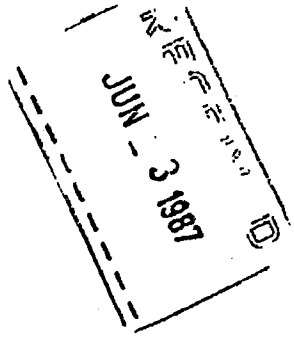
CPDA

California Public Defenders Association

Legislative Office
1010-11th Street, Suite 300
Sacramento, CA 95814
(916) 442-0238

David Nagler
Legislative Advocate

July 10, 1987



Assembly Member Larry Stirling
Chair, Assembly Committee on Public Safety
State Capitol
Sacramento, California 95814

Re: SB 425

Dear Assembly Member Stirling:

I write on behalf of the California Public Defenders Association and California Attorneys for Criminal Justice to oppose Senate Bill 425 (McCorquodale).

Prior to setting our objections, I want to point out that amendments have been drafted which answer the concerns indicated below. A draft of those amendments are attached. Should these amendments be inserted into the bill, we will no longer oppose SB 425.

Amendment of Section 1017 of the Evidence Code (page 3, line 1):

There would be no objection as the amendment refers specifically to the "independent professionally-appointed by the Board of Prison Terms" described in Penal Code Section 2978, and if two professionals were required to clearly explain the purpose of the examination to the patient. There should be a statement that the examination is not part of the patient's treatment, but rather to determine if the patient would require sufficient mental health treatment which may require confinement in a state mental hospital beyond the patient's parole date.

Otherwise, we would be seriously undermining the necessary relationship of trust and confidence between treating professionals and their prisoners/patients.

Amendment of Sections 2966 and 2972 of the Penal Code (page 9 to 11):

Most of the criteria set out in Section 2962 (see page 6) to bring a prisoner within the "MENTALLY DISORDERED OFFENDER" law are historical facts which will not change. The only criterion subject to change is whether the prisoner as a severe mental disorder is not in remission or cannot be kept in remission without treatment. The amendment of Section 2966 and 2972 would make the issue to be decided in a Superior Court trial whether the prisoner meets the criteria on a date, weeks, or months before the trial.

(Page 9, lines 38 to 39, and page 11, lines 4 to 7):

Surely, the present form of the law where the issue is whether the prisoner meets the criteria at the time of trial is preferable.

First, there is no interest in including a prisoner whose condition has improved after one of those dates to the point where he no longer meets the criteria. Presently, Section 2968 requires that the treatment of such a person be discontinued.

Second, making an issue of the prisoner's mental illness or state of remission on a fixed, substantially earlier date creates unnecessary and difficult problems for judges, juries, and court-appointed psychiatric experts. It is the same problem which has caused so much criticism of trials on the issue of whether an accused was legally insane when he committed the crime. It is much more difficult to accurately assess the state of a person's mental health the same date in the past. Psychiatric experts do their best in those trials, but are subjected to severe criticism for making educated guesses. The present amendments would create the same sort of problem. Additionally, deciding on the basis of mental condition at the earlier date would give an unfair advantage to the prosecutor. The expert witnesses would very likely have seen and examined the prisoner more nearer to the crucial date. Experts appointed by the court or retained by the defense, would examine the prisoner much later - so their opinions would be less certain and have less convincing force.

Under present law, similar trials are conducted to determine whether to extend the terms of persons who were previously found not guilty by reason of insanity. The issues are mental illness and dangerousness. There are none of the problems discussed above because the decision is based upon a person's mental condition at the time of trial.

Finally, seeking a date well before the court and defense counsel are involved for deciding whether a prisoner meets the criteria will lead to claims that the prisoner's condition was manipulated by altering or neglecting his treatment.

Please leave Sections 2966 and 2972 as they are now. The purported amendment creates more problems than they solve.

Addition of Section 2981 to the Penal Code (page 13, line 4):

This addition is objectionable in its present form.

"Prima facie" evidence is evidence sufficient to establish a fact unless it is rebutted or contradicted.

Records of a penal institute might clearly show 90 days of treatment within the prior year. They might also leave substantial question as to the fact of "treatment," its duration, or when it occurred. Because of this, certified records should not be given the status of prima facie evidence. Rather, that should just be made admissible, and that proof should depend upon their conduct. If the conduct is detrimental, it could be supported by witnesses' testimonies. The Department of Corrections has ready access to any necessary witness. It would be costly, time consuming, and unreasonable to require the defense to prove a negative or conduct an investigation of the patient's prison treatment in order to rebut what this Section would make prima facie evidence.

We suggest the following changes to eliminate this problem:

Page 13, lines 6 and 7 - delete: "establishing prima facie evidence". Insert in its place: "proving".

Page 13, line 14: delete: "introduction as such". Insert in its place: "amended as".

Thank you for your consideration.

Sincerely,

David Nagler

David Nagler
Legislative Advocate

cc: Senator Dan McCorquodale
Members, Assembly Committee on Public Safety

California Legislature

Joint Committee for Revision of the Penal Code

1100 J STREET
SUITE 320
SACRAMENTO, CA 95814
(916) 322-3519

COMMITTEE STAFF:

EDWARD R. COHEN J.D
CHIEF COUNSEL

MARIA HILAKOS HANKE
COUNSEL

NANCY MARSHALL
EXECUTIVE ASSISTANT

SENATOR KENNETH L. MADDY
CHAIRMAN

COPY

SACRAMENTO, CA.
July 10, 1987

David Nagler
Legislative Advocate
California Public Defenders Association
1010 - 11th Street, Suite 300
Sacramento, CA 95814

Dear David:

Ed Gillmore of the Los Angeles Public Defender's office, Lee Cunningham of the San Luis Obispo DA's office and I have discussed SB 425 and reached agreement on the attached amendments. It is my understanding with Ed Gillmore that with these amendments CACJ and CPDA will remove their opposition. Senator McCorquodale will introduce the amendments as author's amendments at the committee hearing. A copy will be given to the committee today.

Sincerely,

EDWARD (Ned) COHEN
Chief Counsel

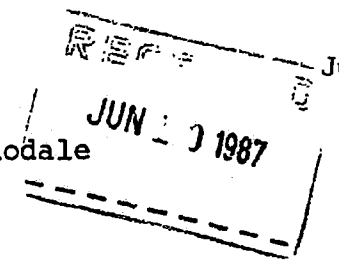
EC:nm
Enclosure

EXHIBIT B

11

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF MENTAL HEALTH
1600 – 9th STREET
SACRAMENTO, CA 95814



Julu 10, 1987

The Honorable Dan McCorquodale
Member of the Senate
State Capitol
Sacramento, CA

Dear Senator McCorquodale:

The Department of Mental Health supports SB 425 which would rename the Department's Conditional Release Program, and make various revisions to the Penal Code regarding treatment, procedural and legal liability issues relating to the mentally disordered offender (MDO) population.

The Department believes that these changes to existing statutes will ensure that the appropriate treatment is provided to those mentally disordered offenders who can benefit from it prior to and as a condition of parole. We also believe that the revisions proposed in the bill regarding privileged communications and trial procedures will ensure that MDO determinations will not be dismissed because of procedural problems during the trial phases of the process. Having all evaluators, including the Chief Psychiatrist of the California Department of Corrections certify that the parolee meets all eligibilty requirements will ensure consistency throughout the entire process.

In summary, SB 425 makes necessary revisions to the Penal Code that will eliminate ambiguities and oversights found in the current laws relating to the Mentally Disordered Offender Program.

If we can be of further assistance, please call Jaime Guzman of my staff at 323-8186.

Sincerly,

For D. Michael O'Connor, M.D.
Director

cc: Assembly Public Safety Committee
DeeDee D'Adamo, Consultant
Jan Dell, Minority Consultant

1494-0044

EXHIBIT B

12

The documents following this page were photocopied from the files of the Assembly Republican Caucus.

State of California—Health and Welfare Agency

Department of Mental Health

BILL ANALYSIS

DMH 35 (Rev. 1)

Mental Health	Author: Senator McCorquodale	Bill Number: SB 425
Sponsored By	Related Bills	Date Last Amended: April 1, 1987 & May 4, 1987

Summary

This bill, as originally introduced, was a technical spot bill and the changes were nonsubstantive. The treatment and legal issues relating to the mentally disordered offenders are included in this amendment.

LEGISLATIVE BACKGROUND

These amendments, introduced by Senator McCorquodale, were written by the consultant to the Joint Committee for Revision of the Penal Code and Department of Mental Health (DMH) did provide input to clean up the issues to the existing statutes.

PROGRAM BACKGROUND

DMH state hospitals provide psychiatric hospitalization and treatment to the mentally disordered offenders and the Conditional Release Program provides community supervision and treatment to patients on an outpatient basis.

SPECIFIC FINDINGS

This bill requires the following:

1. Clarifies that for psychotherapists appointed by the Board of Prison Terms (BPT) there is no privileged communication with respect to mandated evaluations.

2. Changes the name and all statutory references from the Conditional Release Program to the Mental Health Conditional Release Program. This change was requested by the California Probation Parole and Correctional Association because by definition probation is "conditional release" and this will alleviate the confusion between the two programs.

3. Cleans up certain statutory references. When SB 1845 (Chapter 858, Statutes of 1986) amended SB 1296 (Chapter 1419, Statutes of 1985), it incorrectly referenced the new section in the Penal Code Sections 1619 and 1620.

Position: Support				Governor's Office Use	
				Position Noted	
				Position Approved	✓
Department Director	Date	Agency Secretary	Date	Position Disapproved	
[signature]	6/17/87			By [signature]	Date 6/24

1494-0047

4. Provides that the Chief Psychiatrist of the California Department of Corrections (CDC) will now be required to certify to BPT that the prisoner has received treatment for 90 days or more within the year prior to parole and that force or violence was used during the commission of the crime. Previously, the only statement required on the certification was that the prisoner has a severe mental disorder, that the disorder is not in remission or cannot be kept in remission without treatment, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

5. The earlier amendment changed the deadline for DMH to hold a hearing for placement of an outpatient mentally disordered offender back into a secure mental health facility from 15 to 20 days. Also, it changed the number of days, from 60 to 120, the mentally disordered offender must be an inpatient before a hearing can be requested for placement on outpatient status. The latest amendment deleted this increase and the language is now identical to the existing language in Penal Code 2964.

6. The earlier amendment stated that a waiver of liability shall apply for any criminal acts committed by those patients being evaluated by independent professionals appointed by BPT. The latest amendment deleted this provision.

7. Procedural changes at jury trials. During the proceedings, the court will make a determination whether the mentally disordered offender's status meets or have met the conditions of parole as of the date of parole, at the time the mentally disordered offender requests a petition for hearing or at the time of filing for a petition for recommitment. Specified evidence may be introduced to substantiate a prisoner has received 90 days or more of treatment within a year prior to parole or release.

PRO

1. These changes to the existing statutes will ensure that the appropriate treatment is provided to the mentally disordered offenders who can benefit from it.

2. These changes to the existing statutes will ensure that the appropriate treatment is provided to the mentally disordered offenders as a condition of parole prior to release or parole.

3. Changes in privilege and trial procedures will insure appropriate mentally disordered offender determinations will not be dismissed at trial because of procedural problems.

4. Having all evaluators as well as the Chief Psychiatrist certify to the same criteria will insure consistency in the entire process.

CON

1. The bill in its present form fails to address liability. DMH had sought a clear waiver of liability similar to that in Penal Code 1618, for all persons evaluating and treating mentally disordered offenders.

2. The most recent amendment fails to address the deadline change (15 to 20 days) and the hearing threshold change (60 to 120 days) DMH wish to make.

FISCAL IMPACT

There is no fiscal impact to DMH as these amendments to the existing statutes make changes to the legal process with no additional staffing.

RECOMMENDATION

Support. With the enactment of this bill, certain procedures relating to the certification of mentally disordered offenders and the jury trials will be clarified.

EXHIBIT B

13

LL ANALYSIS

YOUTH AND ADULT CORRECTIONAL AGENCY

PARTMENT Board of Prison Terms	AUTHOR McCorquodale	BILL NUMBER SB 425
...PED BY	RELATED BILLS	DATE LAST AMENDED May 4, 1987

LL ...MMARY

This Legislative measure, as amended, would provide that there is no privileged communication if a psychotherapist is appointed by the Board of Prison Terms to evaluate a prisoner pursuant to the mentally disordered offender statute;

Would rename the Mentally Disordered Offender Program the "Mental Health Conditional Release Program;"

Would require that certification under the mentally disordered offender statute include findings that the prisoner has been in treatment for the severe mental disorder 90 days or more within the year prior to the parole release date, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison, and would specify evidence which can be used to establish the fact that the prisoner has received treatment for 90 days or more;

Would require the State Department of Mental Health to conduct a hearing to determine whether or not a parolee can be safely and effectively treated in a local outpatient program within 20 days rather than 15 days of the placement of the parolee in a secure mental health facility;

Would provide that the superior court hearing required under the mentally disordered offender statute shall be for the purpose of determining whether the prisoner, as of the date of his or her parole, has met the prescribed criteria for treatment by the department;

Would provide that the independent professional appointed by the Board of Prison Terms shall not be held criminally or civilly liable for criminal acts committed by persons evaluated by those professionals.

BACKGROUND:

Under existing Evidence Code § 1017 a communication between a patient and the patient's psychotherapist is a privileged communication except under specified circumstances which do not include psychotherapist appointed by the Board of Prison Terms.

Existing law provides for the placement on outpatient status of mentally disordered offenders and refers to that program as the "Conditional Release Program."

...ON Support				Governor's Office Use
		David E. Brown 322-6729		Position noted
				Position approved ✓
				Position disapproved
EPARTMENT DIRECTOR N. E. KOENIG irman	DATE 6/5/87	AGENCY SECRETARY ORIGINAL SIGNED BY Michael B. Neal Deputy Secretary	DATE 6/10/87	by: date: 6/12

Existing law provides for inpatient or outpatient treatment of certain convicted felons with a severe mental disorder as a condition of parole, and for their continued treatment upon termination of parole or release from prison.

Pursuant to existing law, if a parolee is placed in a local outpatient program, the director of that program may place the parolee in a secure mental health facility if the parolee can no longer be safely and effectively treated in the program. Within 15 days of that placement, the State Department of Mental Health is required to conduct a hearing on whether the parolee can be safely and effectively treated in the program.

Existing law authorizes a prisoner to request a hearing before the Board of Prison Terms for purposes of proving that the prisoner meets specified criteria for treatment by the State Department of Mental Health as a condition of parole and provides that if the prisoner disagrees with the determination of the Board, he or she may file a petition for a hearing in the superior court on whether he or she meets the criteria for treatment by the State Department of Mental Health.

Finally, existing law, requires the Board of Prison Terms to appoint independent professionals for purposes of treatment and evaluation of mentally disordered prisoners.

ANALYSIS:

The amendments proposed by the legislative measure are technical in nature and would not result in any substantive changes in the existing mentally disordered offender statute with respect to the roles and functions of the Board of Prison Terms, Department of Corrections and the Department of Mental Health.

Although California Evidence Code Section 1017 excludes appointments of psychotherapists appointed by order of a court to examine a patient, it does not provide a specific exclusion for psychotherapists appointed by the Board of Prison Terms to examine a patient. Psychotherapists appointed by the Board could assert their privilege at a certification hearing, thus, preventing the Board from considering evidence that would be relevant to a determination that a parolee meets the criteria for mental health treatment.

Welfare and Institutions Code Section 5709.8 provides that the State Department of Mental Health is responsible for the community treatment and supervision of judicially committed patients through a program known as the Mental Health Conditional Release Program. This program provides services on a county and regional basis directly and indirectly through contracts with private providers or counties. This bill would rename the current program for treating mentally disordered offenders the "Mental Health Conditional Release Program." Mentally disordered offenders, unlike other judicially committed patients, remain under supervision of the Parole and Community Services Division and the jurisdiction of the Board of Prison Terms while participating in the outpatient program. Therefore, it could be argued that changing the name of the existing program would be misleading since the Board of Prison Terms is the agency with primary responsibility for the parolee's behavior upon release to the community.

This legislative measure would add an additional requirement that must be met when certifying a prisoner to the Board of Prison Terms as meeting the criteria as a mentally disordered offender. The additional requirement would include an additional finding that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the parole release date, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison. This amendment would simply make the criteria for certification that is presently used by psychotherapist conform to the criteria of the criteria used at the certification hearing. This would be helpful to the Board of Prison Terms since it would make more relevant evidence available upon which the Board could rely in making its findings at a certification hearing.

This bill would add Section 2981 to the Penal Code to provide that for the purpose of establishing prima facie evidence of the fact that a prisoner has received 90 days or more of treatment within the past year prior to the prisoner's parole or release, the records or copies of records of any state penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be introduced as such evidence. This would be helpful to the Board of Prison Terms in making determinations at certification hearings since the existing statute does not provide any guidelines on establishing prima facie evidence of important facts.

The bill, as amended, would provide that a prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria as a mentally disordered offender could file a petition for a hearing in superior court on whether he or she, as of the date of his or her parole, met the mentally disordered offender criteria. This issue has been raised by attorneys for mentally disordered offenders who have argued to the courts that the standard to be applied is whether the prisoner met the criteria at the time of the jury trial not at the time of parole. This amendment would clarify this provision in the law, thus, making it easier for district attorneys to prosecute mentally disordered offender cases.

Finally, this bill would provide statutory immunity from liability for independent professionals appointed by the Board of Prison Terms. This immunity would provide that Board appointed independent professionals could not be held criminally or civilly liable for criminal acts committed by persons evaluated by those professionals. This provision would eliminate a fear some psychotherapists have of providing evaluations on persons with violent criminal histories.

FISCAL IMPACT:

Since this bill contains only amendments of a technical nature and does not substantially change existing mentally disordered offender certification and hearing procedures, it would not have a fiscal impact on the Board of Prison Terms.

RECOMMENDATION: Support

A support position is recommended because this bill is a clean-up measure to eliminate various technical problems in the existing mentally disordered offender statute and to make the procedures more efficient. Moreover, this bill if enacted would be beneficial to the Board in performing its functions pursuant to the mentally disordered offender statute.

EXHIBIT B

14

SB 425 (McCorquodale)
Assembly Committee on Public Safety
July 13, 1987

THIS IS A CLEANUP BILL FOR LEGISLATION ENACTED IN 1985 TO DEAL WITH MENTALLY DISORDERED OFFENDERS.

UNDER THAT LEGISLATION, PERSONS WITH A SEVERE MENTAL ILLNESS WHO HAVE COMMITTED A CRIME OF VIOLENCE MAY BE REQUIRED TO UNDERGO MENTAL HEALTH TREATMENT UPON RELEASE FROM PRISON, EITHER IN AN INSTITUTION OR ON AN OUT-PATIENT BASIS.

SB 425 CLARIFIES TECHNICAL MATTERS CONCERNING THE COMMITMENT PROCEDURES UNDER THIS PROGRAM:

1. ONE OF THE CRITERIA FOR COMMITMENT IS THAT THE MENTALLY DISORDERED OFFENDER MUST HAVE UNDERGONE AT LEAST 90 DAYS OF TREATMENT FOR THE MENTAL DISORDER WITHIN THE YEAR PRIOR TO THE DATE OF RELEASE FROM PRISON. THIS BILL REQUIRES THE CHIEF PSYCHIATRIST OF THE DEPARTMENT OF CORRECTIONS TO CERTIFY THAT THE CRITERION IS SATISFIED.

2. THE BILL ALSO EXEMPTS FROM THE PSYCHOTHERAPIST-PATIENT PRIVILEGE INFORMATION DISCLOSED DURING AN EXAMINATION TO DETERMINE WHETHER A PERSON QUALIFIES FOR THE PROGRAM. THIS EXEMPTION PARALLELS THE EXEMPTION UNDER CURRENT LAW FOR MENTAL HEALTH COMMITMENT PROCEDURES. WITHOUT THE EXEMPTION THE PSYCHOTHERAPIST WOULD BE UNABLE TO COMMUNICATE WITH THE BOARD OF

PRISON TERMS REGARDING THE OFFENDER'S ELIGIBILITY FOR THE PROGRAM.

3. THE BILL ALSO CONTAINS SEVERAL MINOR MODIFICATIONS REGARDING THE COMMITMENT PROCESS.

THE BILL IS SUPPORTED BY THE DISTRICT ATTORNEY OF SAN LUIS OBISPO COUNTY WHERE MOST OF THESE COMMITMENTS TAKE PLACE.

I HAVE CLARIFYING AUTHOR'S AMENDMENTS (WHICH HAVE BEEN GIVEN TO THE COMMITTEE STAFF). THESE AMENDMENTS REMOVE ALL OPPOSITION. THEY ARE AS FOLLOWS:

1. REQUIRE THE PRISONER BE INFORMED THAT THE PSYCHIATRIC EXAMINATION IS NOT FOR TREATMENT BUT TO DETERMINE ELIGIBILITY UNDER THE PROGRAM.

2. REQUIRE PROOF THAT THE MENTAL DISORDER BE AS OF THE DATE OF THE BOARD OF PRISON TERMS HEARING.

3. ESTABLISH THAT THE EXCEPTION TO THE HEARSAY RULE FOR DEPARTMENT OF CORRECTIONS DOCUMENTATION SHOWING 90 DAYS OR MORE OF TREATMENT NOT BE PRIMA FACIE EVIDENCE.

Lee Cunningham
SLO DA's
Dept Health Supports

EXHIBIT B

15

STATEMENT ON SENATE BILL 425
ASSEMBLY PUBLIC SAFETY COMMITTEE

SB 425 amends the Penal Code sections regulating the disposition of mentally disordered prisoners upon discharge and related Penal Code and Evidence Code sections.

The law enabling the state to keep mentally disordered offenders in treatment during their parole terms and sometimes upon termination of parole or release from prison went into effect in July, 1986.

To further implement this law, SB 425 would provide, among other things, that:

1. The patient-psychotherapist privilege does not exist if the psychotherapist is appointed by the Board of Prison Terms to treat a prisoner -- just as present law provides that no such privilege exists for court-appointed psychotherapists.

2. The certification to the Board of Prison Terms by a Chief Psychiatrist of the Department of Corrections must include findings that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the release day and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison.

3. Specifies evidence to show that the Department of Corrections has attempted treatment for 90 days.

These procedural changes would assist district attorneys in implementing this law.

SUPPORT

Barry LaBarbera, District Attorney
San Luis Obispo County

AMENDMENTS

The amendments to SB 425 remove the opposition of the California Attorneys for Criminal Justice and the California Public Defenders Association.

The amendments:

1. Require the psychotherapist appointed by the Board of Prison Terms inform the prisoner the examination is not for treatment but to determine if the prisoner meets the criteria to be treated involuntarily as a mentally disordered offender;

2. Require proof of the mental disorder be as of the date of the Board of Prison Terms hearing; and

3. That the exception to the hearsay rule for Department of Corrections documentation showing 90 days or more of treatment not be prima facie evidence.

EXHIBIT B

16

The documents following this page were photocopied from the files of the

Attorney General's Law Library.

L ANALYSIS

YOUTH AND ADULT CORRECTIONAL AGENCY

K MENT	Board of Prison Terms	AUTHOR McCorquodale	BILL NUMBER SB 425
D BY		RELATED BILLS	DATE LAST AMENDED April 1, 1987

L SUMMARY

This legislative measure would amend the Evidence Code and make technical amendments to provisions of the Penal Code which relate to mentally disordered offenders. This measure would provide that there is no privileged communication if a psychotherapist is appointed by the Board of Prison Terms to evaluate a prisoner pursuant to the mentally disordered offender statute;

Would rename the Mentally Disordered Offender Program the "Mental Health Conditional Release Program;"

Would require that certification under the mentally disordered offender statute include findings that the prisoner has been in treatment for the severe mental disorder 90 days or more within the year prior to the parole release date, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison, and would specify evidence which can be used to establish the fact that the prisoner has received treatment for 90 days or more;

Would require the State Department of Mental Health to conduct a hearing to determine whether or not a parolee can be safely and effectively treated in a local outpatient program within 20 days rather than 15 days of the placement of the parolee in a secure mental health facility;

Would allow a parolee to request a hearing before the Board of Prison Terms if the State Department of Mental Health has not placed the parolee on outpatient treatment within 120 days, rather than 60 days, after receiving custody of the parolee or after parole is continued; and

Would provide that the independent professional appointed by the Board of Prison Terms shall not be held criminally or civilly liable for criminal acts committed by persons evaluated by those professionals.

BACKGROUND:

Under existing Evidence Code § 1017 a communication between a patient and the patient's psychotherapist is a privileged communication except under specified circumstances which do not include psychotherapist appointed by the Board of Prison Terms.

Existing law provides for the placement on outpatient status of mentally disordered offenders and refers to that program as the "Conditional Release Program."

Relevant provisions of existing law provides for inpatient or outpatient treatment of certain convicted felons with a severe mental disorder as a

N

SUPPORT

PARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
[signature]	4/23/87	David E. Brown 322-6729 ORIGINAL SIGNED BY Michael B. Neal Deputy Secretary	4-27-87

Governor's Office Use

Position noted	
Position approved	✓
Position disapproved	

by: [signature] date: 4/27

1494-0098

Amended April 1, 1987

condition of parole, and for their continued treatment upon termination of parole or release from prison. Pursuant to this law, and prior to release on parole, a chief psychiatrist of the Department of Corrections is required to certify to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior.

Pursuant to existing law, if a parolee is placed in a local outpatient program, the director of that program may place the parolee in a secure mental health facility if the parolee can no longer be safely and effectively treated in the program. Within 15 days of that placement, the State Department of Mental Health is required to conduct a hearing on whether the parolee can be safely and effectively treated in the program.

Under existing law a parolee is authorized to request a hearing before the Board of Prison Terms, in order to determine whether the parolee shall be treated as an inpatient or outpatient, in those cases where the State Department of Mental Health has not placed that parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to law.

Finally, existing law mandates the Board of Prison Terms to appoint independent professionals for purposes of treatment and evaluation of mentally disordered prisoners.

ANALYSIS:

The amendments proposed by this bill are technical amendments and would not result in any substantive changes in the existing mentally disordered offender statute with respect to the roles and functions of the Board of Prison Terms, Department of Corrections, and Department of Mental Health.

Although California Evidence Code section 1017 excludes appointments of psychotherapists appointed by order of a court to examine a patient, it does not provide a specific exclusion for psychotherapists appointed by the Board of Prison Terms to examine a patient. Psychotherapists appointed by the Board could assert their privilege at a certification hearing, thus, preventing the Board from considering evidence that would be relevant to a determination that a parolee meets the criteria for mental health treatment.

Pursuant to Section 5709.8 of the Welfare and Institutions Code, the State Department of Mental Health is responsible for the community treatment and supervision of judicially committed patients through a program known as the Mental Health Conditional Release Program. This program provides services on a county and regional basis directly and indirectly through contracts with private providers or counties. This bill would rename the current program for treating mentally disordered offenders the "Mental Health Conditional Release Program." Mentally disordered offenders, unlike other judicially committed

patients, remain under supervision of the Parole and Community Services Division and the jurisdiction of the Board of Prison Terms while participating in the outpatient program. Therefore, it could be argued that changing the name of the existing program would be misleading since the Board of Prison Terms is the agency with primary responsibility for the parolee's behavior upon release to the community.

This bill would add an additional requirement that must be met when certifying a prisoner to the Board of Prison Terms as meeting the criteria as mentally disordered offender. The additional requirement would include an additional finding that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime for which the prisoner was sentenced to prison. This amendment simply makes the criteria for certification used by psychotherapist to conform to the criteria at the certification hearing conducted by the Board of Prison Terms and would be helpful to the Board by providing more relevant evidence upon which it could rely in making its findings at the certification hearing.

This bill would add Section 2981 to the Penal Code to provide that for the purpose of establishing prima facie evidence of the fact that a prisoner has received 90 days or more of treatment within the year prior to the prisoner's parole or release, the records or copies of records of any state penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be introduced as such evidence. Since the existing statute does not specify what evidence can be used to establish that a prisoner has been in treatment for 90 days prior to release, this proposed statute would provide statutory criteria for use both by the Board and the certifying agency and since the criteria is broad in nature, as it provides for use of records of any hospital, jail or prison, it would be helpful to the Board in making its determinations at certification hearings.

Pursuant to this bill, the Department of Mental Health would be required to conduct a hearing within 20 days rather than within 15 days after a parolee is placed in a secure mental health facility and a parolee would be authorized to make a request for a hearing after certification to the Department of Mental Health within 120 days rather than within 60 days of receipt of the parolee by the Department of Mental Health. This provision would allow more time for both the Department of Mental Health and the Board of Prison Terms to schedule their respective hearings.

Finally, this bill would provide statutory immunity from liability for independent professionals appointed by the Board of Prison Terms. This immunity would provide that Board appointed independent professionals could not be held criminally or civilly liable for criminal acts committed by persons evaluated by those professionals. This provision would eliminate a fear some psychotherapist have of providing evaluations on persons with violent criminal histories.

FISCAL IMPACT:

Since this bill involves only technical amendments and does not substantially change existing mentally disordered offender certification and hearing procedures, it would not have a fiscal impact on the Board of Prison Terms.

RECOMMENDATION: Support

EXHIBIT C

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The documents following this page were photocopied from the files of the

Senate Committee on

Criminal Procedure.

SENATE COMMITTEE ON CRIMINAL PROCEDURE

Senator Milton Marks, Chair
1995-96 Regular Session

S
B

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4

SB 34 (Peace)
As amended April 5, 1995
Hearing date: April 25, 1995
Penal Code
LK:ll

MENTALLY DISORDERED OFFENDERS

HISTORY

Source: Author

Prior Legislation: SB 1296 (1985) -- Chaptered

Support: Los Angeles District Attorney; Peace Officers Research Association; Doris Tate Crime Victims Bureau

Opposition: No known

KEY ISSUE

SHOULD THE LIST OF CRIMES PREREQUISITE FOR PLACEMENT IN THE MENTALLY DISORDERED OFFENDER PROGRAM BE CLARIFIED?

PURPOSE

Existing law requires that any prisoner who has a severe mental disorder that is not in remission or cannot be kept in remission without treatment and who meets specified criteria shall as a condition of parole be treated by the State Department of Mental Health. The precipitating crime must be one in which the prisoner used force or violence.

This bill would expand and list crimes for which the person can be committed to the mentally disordered offender program. The bill would also clarify that this procedure is to be used only in the case of determinatively sentenced prisoners.

(More)

The purpose of this bill is to list with more specificity the prisoners who are to be sentenced to the mentally disordered offender program.

COMMENTS

1. Expressed Purpose of the Bill.

According to the author:

> Current law provides for the Mentally Disordered Offender (MDO) program which is a statutory framework for the treatment of individuals who have served a determinate prison sentence but who are still dangerous. MDO allows for lifetime civil commitments with treatments prescribed by the Department of Mental Health.
>
> Since MDO went into effect in 1986, the Court of Appeals has suggested various changes to the program to clarify it and broaden its scope, as well as to make the MDO work in a constitutional and effective manner.
>
> SB 34 adopts the suggestion by the court of appeals that a generic list be set forth in statute as to the types of crimes that, in the first instance, would subject a person to the MDO program. The bill provides that persons subject to the MDO include those convicted of attempted murder, voluntary manslaughter, mayhem, kidnapping, specified robberies and carjackings, sexual assault crimes, arson resulting in great bodily injury, specified firearms felonies, and bombing offenses. This is in addition to the current criteria which covers any crime in which the prisoner used force or violence, or caused serious bodily injury.

2. Background.

Existing law provides for the treatment of mentally disordered offenders (MDO) during their term in prison and on parole. (Penal Code Section 2960 et seq.) In the MDO program, the Department of Corrections is to begin treatment of disordered prisoners during their first year of incarceration. As a condition of parole, a person with a severe mental disorder that is not in remission and cannot be kept in remission without treatment may be placed in treatment, under the care of the State Department of Mental Health.

Prerequisite findings by the Board of Prison Terms for placement in the program include that the disorder was one of the causes or was an aggravating factor in the crime, that the prisoner has been in treatment, that the person used force or violence or caused serious bodily injury in

(More)

committing the crime, that he or she represents a substantial danger of physical harm to others, and that the disorder cannot be kept in remission without treatment.

The MDO patient may be treated either as an inpatient or outpatient. The finding by the Board of Prison Terms is appealable to the court, with the right to an attorney, proof beyond a reasonable doubt, and a unanimous jury verdict.

A district attorney may petition the court for one-year extensions.

3. Problem of Specificity.

In People v. Collins, 10 Cal.App.4th 690,697 (1992) the court discussed the requirement that placement in the MDO program pursuant to Penal Code Section 2962 requires a commitment offense in which the defendant used "force or violence":

> As indicated, these theoretical and hypothetical illustrations are at odds with the legislative history. The Legislature may wish to amend the definition of what qualifies as an underlying offense. Our reading of the materials leads us to suggest that the Legislature may have had in mind those offenses specified in [the violent felony list specified in Penal Code Section 667.5(c)]. Nevertheless, we take the statute as we find it. We adopt an interpretation which avoids redundancy and accords significance to each word or phrase of the statute. [Citation.] ... The words, "force" and "violence," are words of ordinary meaning and require no further definition. [Citations.]

This bill would add specific offenses, similar to the violent felony list, which would meet the "force and violence" definition without the necessity of proof of that fact. The offenses are:

a. Voluntary manslaughter

b. Mayhem

c. Rape or spousal rape by force, violence, duress, menace, or fear of bodily injury or by threat to retaliate

d. Sodomy by force, violence, duress, menace or fear of bodily injury

e. Oral copulation by force, violence, duress, menace or fear of bodily injury

f. Lewd acts on a child under age 14

g. Any felony in which the defendant personally used a firearm.

(More)

h. Robbery when the defendant personally uses a dangerous or deadly weapon

i. Arson when willful and malicious

j. Rape with a foreign object by force, violence, duress, menace or fear of bodily injury

k. Exploding or attempting to explode a destructive device with intent to murder

l. Kidnap

m. Continuous sexual abuse of a child

n. Carjacking when the defendant personally uses a dangerous or deadly weapon

In addition, the current statutory provision of eligibility based on a crime of force, violence, or causation of serious bodily injury would remain intact.

****

Bill No. SB 834 [redacted]

SENATE COMMITTEE ON CRIMINAL PROCEDURE
BACKGROUND INFORMATION
322-~~2305~~
1305

Please complete this form and return it to the Senate Committee on Criminal Procedure, Room 5046. Your bill will not be set until this form is returned. **CALL AS SOON AS POSSIBLE TO SET YOUR BILL.**

1. Please give the name and number of the person on your staff responsible for this measure?

Irwin Nowick

2. Which agency, organization or individual requested the introduction of this bill?

Name: Irwin Nowick/Author

Contact Person:

Phone Number:

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?

Charley Fennessey/Gov's Office

4. Which agencies, organizations or individuals have expressed opposition?

Unclear

5. If a similar bill has been introduced in a previous session, what was the number and year of its introduction?

SB 41X

6. What problem or deficiency under current law does the bill seek to remedy?

See attached

7. Describe <u>any</u> amendments anticipated for this bill prior to the hearing. PLEASE NOTE THAT THE HEARING OF A BILL MAY BE DELAYED IF ONE SIGNED AND SIX UNSIGNED COPIES OF SUBSTANTIVE AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE CONSULTANT IN A TIMELY MANNER.

SEE ATTACHED

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies or state where such information is available.

EXHIBIT C

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SB 34 FACT SHEET

The purpose of SB 34 is set forth in the attached co-author sheet. As the bill proceeds, we look top Lester Kleinberg to help improve the MDO program.

As proposed to be amended via author's amendments, the bill accepts the invitation of the Court of Appeal in People v. Collins, (1992) 10 Cal.App.4th 690 to define by generic crime listing those persons determinately sentenced who are subject to MDO.

As proposed to be amended, the following crimes would be listed which meet both of the following criteria:

- The defendant received a determinate sentence pursuant to PC Section 1170 for the crime.
- The crime is one of the following:
  - Voluntary manslaughter.
  - Mayhem.
  - Kidnapping in violation of Section 207.
  - Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.
  - Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.
  - Forcible rape, sodomy, oral cop, or foriegn object rape
  - Lewd acts on a child under the age of 14 years in violation of Section 288.
  - Continuous sexual abuse in violation of Section 288.5.
  - Arson in violation of subdivision (a) of Section 451.
  - Any felony in which the defendant used a

firearm which use was charged and proved as provided in Section 12022.5 or 12022.55.

- o A violation of Section 12308.
- o A crime not enumerated above in which the prisoner used force or violence or caused serious bodily injury under the current standard.

EXHIBIT C

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California State Senate

STATE CAPITOL
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SENATOR
STEVE PEACE
FORTIETH SENATORIAL DISTRICT

COMMITTEES
BUDGET AND FISCAL REVIEW
SUBCOMMITTEE #3 ON HEALTH, HUMAN SERVICES & LABOR
ENERGY AND PUBLIC UTILITIES
INSURANCE, CLAIMS AND CORPORATIONS
TRANSPORTATION

January 11, 1995

MEMO TO: All Members of the Legislature

FROM: Senator Steve Peace

Re: Co-author request -- SB 34 (Peace-Martinez)
Mentally Disordered Offenders

In his State of the State address, Governor Wilson referred to the release of various individuals form the state prison system who have served their determinate sentences but who are still dangerous.

Current law provides for the Mentally Disordered Offender (MDO) program which is a statutory framework for the treatment of individuals who have served a determinate prison but who are still dangerous in a constitutional manner. MDO allows for lifetime civil commitments with treatments prescribed by the Department of Mental Health.

Since MDO went into effect in 1986, the Court of Appeals has suggested various changes to the program to clarify it and broaden its scope, as well as to make the MDO work in a constitutional and effective manner. While the high profile cases that the Governor referred to are sex offenders, the problems with the MDO are not limited to sex offenders.

Over the last several months, my staff has communicated with the Governor's legislative representatives, policy committee staff, and others to discuss appropriate and constitutional additions to the MDO program. This is a more rational approach than creating a new and redundant scheme related exclusively to sex offenders.

In order to institute appropriate changes, Assemblywoman Martinez and I have introduced SB 34. In its current form, SB 34 adopts the suggestion by the Court of Appeal that a generic list be set forth in statute as to the types of crimes that, in the first instance, would subject a person to the MDO program.

SB 34 is the statutory answer to the suggestion by the Court of Appeals. The bill provides that persons subject to the MDO include those convicted of attempted murder, voluntary manslaughter, mayhem, kidnapping, specified robberies and carjackings, sexual assault crimes, arson resulting in great bodily injury, specified firearms felonies, and bombing offenses. This is in addition to the current criteria which covers any crime in which the prisoner used force or violence, or caused serious bodily injury.

The bill will make other changes to the MDO program to assure that it operates in an effective and consistent manner.

If you wish to co-author SB 34, please return the tear-off portion of this form to my office no later than February 10, 1995. If you have any questions concerning SB 34, please contact my staff at 445-6767.

Yes, I wish to co-author SB 34.

Member's Name _____ Member's Signature _____

EXHIBIT C

20

The documents following this page were photocopied from the files of the

Assembly Committee on

Public Safety.

Date of Hearing: July 11, 1995
Counsel: Martin Gonzalez

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

SB 34 (Peace) - As Amended: May 1, 1995

ISSUE: SHOULD THE LIST OF CRIMES THAT ARE A PREREQUISITE FOR PLACEMENT IN THE MENTALLY DISORDERED OFFENDER PROGRAM BE CLARIFIED?

DIGEST

Current law requires that any prisoner who has a severe mental disorder that is not in remission or cannot be kept in remission without treatment and who meets specified criteria shall as a condition of parole be treated by the State Department of Mental Health. The precipitating crime must be one in which the prisoner used force or violence.

This bill:

1) Expands and list crimes for which the person can be committed to the Mentally Disordered Offender Program.

2) Provides that this procedure is to be used only in the case of determinatively sentenced prisoners.

COMMENTS

1) Purpose. According to the author:

> Current law provides for the Mentally Disordered Offender (MDO) program which is a statutory framework for the treatment of individuals who have served a determinate prison sentence but who are still dangerous. MDO allows for lifetime civil commitments with treatments prescribed by the Department of Mental Health.
>
> In People v. Collins, (1992) 10 Cal.App.4th 690, 697, the court discussed the requirement that placement in the MDO program, pursuant to Penal Code Section 2962 requires a commitment offense in which the defendant used force or violence. In Collins, the court suggested that the Legislature may wish to amend the definition of what qualifies as an underlying offense.
>
> This bill utilizes an expanded form of the violent felony as passed by various committees to meet the Court's suggestion. This bill would add specific offenses, similar to the violent felony list, which would meet the "force and violence" definition without the necessity of proof of that fact.
>
> The bill provides that persons subject to the MDO include those convicted of attempted murder, voluntary manslaughter, mayhem, kidnapping, specified robberies and carjackings, specified sexual abuse and sexual assault crimes, arson resulting in great bodily injury, specified firearms felonies, and bombing offenses.

In addition, the current statutory provision of elgibility based on a crime of force, violence, or causation of serious bodily injury would remain intact.

2) Background. Existing law provides for the treatment of mentally disordered offenders (MDO) during their term in prison and on parole. (Penal Code Section 2960 et seq.) In the MDO program, the Department of Corrections is to begin treatment of disordered prisoners during their first year of incarceration. As a condition of parole, a person with a severe mental disorder that is not in remission and cannot be kept in remission without treatment may be placed in treatment, under the care of the State Department of Mental Health.

Prerequisite findings by the Board of Prison Terms for placement in the program include that the disorder was one of the causes or was an aggravating factor in the crime, that the prisoner has been in treatment, that the person used force or violence or caused serious bodily injury in committing the crime, that he or she represents a substantial danger of physical harm to others, and that the disorder cannot be kept in remission without treatment.

The MDO patient may be treated either as an inpatient or outpatient. The finding by the Board of Prison Terms is appealable to the court, with the right to an attorney, a standard of proof beyond a reasonable doubt, and a unanimous jury verdict.

A district attorney may petition the court for one-year extensions.

3) Problem of Specificity. In People v. Collins, 10 Cal.App.4th 690,697-698 (1992) the court discussed the requirement that placement in the MDO program pursuant to Penal Code Section 2962 requires a commitment offense in which the defendant used "force or violence":

> As indicated, these theoretical and hypothetical illustrations are at odds with the legislative history. The Legislature may wish to amend the definition of what qualifies as an underlying offense. Our reading of the materials leads us to suggest that the Legislature may have had in mind those offenses specified in [the violent felony list specified in Penal Code Section 667.5(c)]. Nevertheless, we take the statute as we find it. We adopt an interpretation which avoids redundancy and accords significance to each word or phrase of the statute. [Citation omitted]....The words, "force" and "violence," are words of ordinary meaning and require no further definition. [Citations omitted]

4) Specific Offenses. This bill adds specific offenses, similar to the violent felony list, which would meet the "force and violence" definition without the necessity of proof of that fact. The offenses are:

a) Voluntary manslaughter.

b) Mayhem.

EXHIBIT D

21

The documents following this page were photocopied from the files of

Assembly Member Paula Boland,

author of this legislation.

STATEMENT AB 3130

LAST YEAR THE LEGISLATURE PASSED AB 888 BY ASSEMBLYMAN ROGAN TO CURTAIL THE RELEASE FROM STATE CUSTODY OF SEXUALLY VIOLENT PREDATORS. A SEXUALLY VIOLENT PREDATOR IS A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE AGAINST TWO OR MORE VICTIMS AND WHO HAS BEEN DIAGNOSED WITH A MENTAL DISORDER THAT MAKES A PERSON A DANGER TO OTHERS, IN THAT IT IS LIKELY THAT THAT PERSON WILL CONTINUE TO ENGAGE IN SEXUALLY VIOLENT CRIMINAL BEHAVIOR.

AB 888 ALLOWS THE STATE TO RETAIN THESE PREDATORS IN CUSTODY AT A DEPARTMENT OF MENTAL HEALTH TREATMENT FACILITY FOR A TWO YEAR CIVIL COMMITMENT. THE LAW PROVIDES A SCREENING PROCESS BY THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF MENTAL HEALTH PRIOR TO SUBMITTAL TO A COUNTY DISTRICT ATTORNEY FOR A DECISION ON WHETHER OR NOT TO PROSECUTE THE OFFENDER AS A SEXUALLY VIOLENT PREDATOR. MY BILL, AB 3130, MAKES TECHNICAL CLEANUP AND NECESSARY ADDITIONAL CHANGES TO THAT LAW.

** ADDS "NOT GUILTY BY REASON OF INSANITY",MENTALLY DISORDERED SEX OFFENDERS, AND OUT OF STATE SEX OFFENDERS TO THE QUALIFYING OFFENSES OF THE SEXUALLY VIOLENT PREDATOR CRITERIA.

** PROVIDES FOR PROOF OF PRIOR CONVICTIONS BY CONSISTENT EVIDENCE AND DOCUMENTARY PROOF CONSISTENT WITH MENTALLY DISORDER OFFENDER PROCEDURES.

** CLARIFIES THE PERPETRATOR-VICTIM RELATIONSHIP TO INCLUDE CASUAL RELATIONSHIPS.

** PROVIDES THE DOC MORE TIME TO IDENTIFY POTENTIAL SEXUALLY VIOLENT PREDATORS WHO MAY BE ELIGIBLE FOR EARLY RELEASE ADMINISTRATIVELY OR BY COURT ACTION.

** PROVIDES FOR SEXUALLY VIOLENT PREDATOR RELEASE NOTIFICATION TO LAW ENFORCEMENT, COMMUNITY AND VICTIMS BY THE DEPARTMENT OF MENTAL HEALTH CONSISTENT WITH CURRENT DOC NOTIFICATION PROVISIONS FOR VIOLENT OFFENDERS.

** PROVIDES AN IMMUNITY CLAUSE TO CONTRACT PSYCHIATRIC PERSONNEL NOW ENJOYED BY STATE EMPLOYEES.

I ASK FOR YOUR AYE VOTE.

EXHIBIT D

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AB 3130 (BOLAND)

COMMITTEE STATEMENT

LAST YEAR THE LEGISLATURE PASSED AB 888 BY ASSEMBLYMAN ROGAN TO CURTAIL THE RELEASE FROM STATE CUSTODY OF SEXUALLY VIOLENT PREDATORS. A SEXUALLY VIOLENT PREDATOR IS A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE AGAINST TWO OR MORE VICTIMS AND WHO HAS BEEN DIAGNOSED WITH A MENTAL DISORDER THAT MAKES A PERSON A DANGER TO OTHERS, IN THAT IT IS LIKELY THAT THAT PERSON WILL CONTINUE TO ENGAGE IN SEXUALLY VIOLENT CRIMINAL BEHAVIOR. AB 888 ALLOWS THE STATE TO RETAIN THESE PREDATORS IN CUSTODY AT A DEPARTMENT OF MENTAL HEALTH TREATMENT FACILITY FOR A TWO YEAR CIVIL COMMITMENT. THE LAW PROVIDES A SCREENING PROCESS BY THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF MENTAL HEALTH PRIOR TO SUBMITTAL TO A COUNTY DISTRICT ATTORNEY FOR A DECISION ON WHETHER OR NOT TO PROSECUTE THE OFFENDER AS A SEXUALLY VIOLENT PREDATOR. MY BILL, AB 3130, MAKES TECHNICAL CLEANUP AND NECESSARY ADDITIONAL CHANGES TO THAT LAW.

- ADDS "NOT GUILTY BY REASON OF INSANITY", MENTALLY DISORDERED SEX OFFENDERS, AND OUT OF STATE SEX OFFENDERS TO THE QUALIFYING OFFENSES OF THE SEXUALLY VIOLENT PREDATOR CRITERIA

- PROVIDES FOR PROOF OF PRIOR CONVICTIONS BY CONSISTENT EVIDENCE AND DOCUMENTARY PROOF CONSISTENT WITH MENTALLY DISORDERED OFFENDER PROCEDURES

- CLARIFIES THE PERPETRATOR-VICTIM RELATIONSHIP TO INCLUDE CASUAL RELATIONSHIPS

- PROVIDES THE DEPARTMENT OF CORRECTIONS MORE TIME TO IDENTIFY POTENTIAL SEXUALLY VIOLENT PREDATORS WHO MAY BE ELIGIBLE FOR EARLY RELEASE ADMINISTRATIVELY OR BY COURT ACTION

- PROVIDES FOR SEXUALLY VIOLENT PREDATOR RELEASE NOTIFICATION TO LAW ENFORCEMENT, COMMUNITY AND VICTIMS BY THE DEPARTMENT OF MENTAL HEALTH CONSISTENT WITH CURRENT DEPARTMENT OF CORRECTIONS NOTIFICATION PROVISIONS FOR VIOLENT OFFENDERS

- PROVIDES AN IMMUNITY CLAUSE TO CONTRACT PSYCHIATRIC PERSONNEL NOW ENJOYED BY STATE EMPLOYEES

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Mark Stevens**

Case No.: **S209643**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 10, 2014, I served the attached **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Gerald J. Miller Esq.
Appellate Defenders, Inc.
800 South Victoria Avenue
Ventura, CA 93012

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 10, 2014, at Los Angeles, California.

E. Obeso
Declarant

Signature

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