

SUPREME COURT COPY

SUPREME COURT
FILED

APR 19 2019

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Jorge Navarrete Clerk

Deputy

The People of the State of California,
Plaintiff and Respondent,

v.

Eric Jason Frahs,
Defendant and Appellant.

No. S252220

Court of Appeal
No. G054674

Superior Court
No. 16CF0837

On review from the
California Court of Appeal,
Fourth Appellate District, Division Three
and the
Superior Court of California for the County of Orange
Honorable Glenn R. Salter, Judge

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

APPELLATE DEFENDERS, INC.

Arthur Martin
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Attorneys for Defendant & Appellant

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APR 19 2019

CLERK SUPREME COURT

**APPELLANT’S REQUEST FOR JUDICIAL NOTICE OF
AN ITEM OF LEGISLATIVE HISTORY:**

**SENATE RULES COMMITTEE,
OFFICE OF SENATE FLOOR ANALYSES,**

**ANALYSIS OF SENATE BILL 215
AS AMENDED AUGUST 23, 2018,**

PREPARED AUGUST 28, 2018.

**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE,
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE STATE OF CALIFORNIA:**

Pursuant to Evidence Code sections 452, subdivision (c), and 459, and California Rules of Court, rule 8.252, appellant Eric Frahs respectfully requests the Court take judicial notice of the attached item of legislative history: the floor analysis of Senate Bill 215, as amended August 23, 2018, prepared by the Senate Rules Committee, Office of Senate Floor Analyses, on August 28, 2018.

The Senate Floor Analysis is a relevant part of the legislative history behind the September 2018 amendments of Penal Code section 1001.36. Evidence Code section 459, subdivision (a), provides that the Court “may take judicial notice of any matter specified in [Evidence Code section] 452.” Section 452, subdivision (c), permits judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments

. . . of any state of the United States.” When appropriate, courts take judicial notice of legislative committee analyses and reports. (See, e.g., *People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1997) 14 Cal.4th 580, 591, fn. 3 [judicial notice of committee reports].)

The floor analysis of Senate Bill 215 is relevant to these proceedings because it includes, on page 2, the bill author’s understanding of the comparative costs of community-based treatment of a mentally ill defendant (\$20,000 and reduced recidivism) and jailing the same defendant (\$75,000 with a greater risk of recidivism). These points are relevant in light of the Attorney General’s argument that the Legislature did not intend Penal Code section 1001.36 to be retroactive to not-final cases because of the expense involved. In fact, this bit of legislative history tends to establish the Legislature believed the opposite – the more defendants who can be diverted, the greater the cost savings.

This Senate Floor Analysis was not presented to the trial court because the case had moved out of the superior court and onto appeal before the analysis was drafted and Senate Bill 215 was approved by the Legislature.

Because the Attorney General’s argument places great weight on the purported “cost savings” animating the Legislature’s passage of

Penal Code section 1001.36, judicial notice of the attached Senate Floor Analysis is appropriate because it shows exactly where the Legislature envisioned costs could be saved – by diverting defendants away from prison and into community-based mental health treatment.

For these reasons, appellant Eric Frahs respectfully requests the Court take judicial notice of the attached floor analysis of Senate Bill 215, as amended August 23, 2018, prepared by the Senate Rules Committee, Office of Senate Floor Analyses, on August 28, 2018.

Dated: April 18, 2019

Respectfully submitted,

Arthur Martin
APPELLATE DEFENDERS, INC.
Attorneys for Defendant & Appellant
ERIC FRAHS

[Proposed]
ORDER GRANTING MOTION FOR JUDICIAL NOTICE

Good cause appearing, it is hereby ordered that Appellant's Motion for Judicial Notice of

the floor analysis of Senate Bill 215, as amended August 23, 2018, prepared by the Senate Rules Committee, Office of Senate Floor Analyses, on August 28, 2018

is GRANTED.

Dated: _____

Chief Justice

ATTACHMENT

Senate Rules Committee,
Office of Senate Floor Analyses,

Analysis of Senate Bill 215
as amended August 23, 2018,

prepared August 28, 2018
pages 1 through 3
(complete)

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 215

Author: Beall (D), et al.
Amended: 8/23/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 1/9/18
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Stone, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 1/18/18
AYES: Lara, Bates, Beall, Bradford, Hill, Nielsen, Wiener

SENATE FLOOR: 38-0, 1/30/18
AYES: Allen, Anderson, Atkins, Bates, Beall, Berryhill, Bradford, Cannella, De León, Dodd, Gaines, Galgiani, Glazer, Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Newman, Nguyen, Nielsen, Pan, Portantino, Roth, Skinner, Stern, Stone, Vidak, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Fuller, Mendoza

ASSEMBLY FLOOR: 79-0, 8/28/18 - See last page for vote

SUBJECT: Diversion: mental disorders

SOURCE: Author

DIGEST:

This bill amends Governor Brown's 2018 pre-trial diversion program in three ways: (1) it eliminates certain offenses from consideration from diversion, including murder, manslaughter, rape, and other sex offenses; (2) it requires courts, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense; and (3) it authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

Assembly Amendments

narrow the bill to deal with clean-up issues after AB 1810 (Assembly Budget Committee, Chapter 34, Statutes of 2018) was signed.

ANALYSIS: Existing law allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community. (Penal Code §§ 1001.35 et seq)

This bill amends the pretrial diversion program created by AB 1810 (Assembly Budget Committee, Chapter 34, Statutes of 2018). Specifically, this bill:

- 1) Eliminates certain offenses from consideration from diversion, including murder, manslaughter, rape and other sex offenses.
- 2) Requires the courts, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense.
- 3) Authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

Comments

According to the author:

One reason for the constant jailing of mentally ill Californians is that before June 2018, trial courts had no ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them, thereby damaging their prospects for future employment and housing. For example, even where an offense is clearly a product of mental illness, a court could not, prior to AB 1810, order mental health treatment, relevant counselling, or adherence to a medication regime unless the person was first convicted, and then placed on probation or sent to jail at county expense.

By reserving court-ordered services for the mentally ill until after a conviction, the prior system led to higher recidivism rates for mentally ill Californians, who were not only left untreated, but with the additional burden of a criminal record. This approach was unfair, impractical and costly. For example, while community based treatment for a mentally ill defendant costs roughly \$20,000 per year (and greatly reduces recidivism), jailing that same defendant (with a greater risk of recidivism) costs the community more than \$75,000 a year.

The predictable results of California's reliance on this outdated method are higher costs for taxpayers, who are forced to pay for the continuous warehousing of the mentally ill, when early, court-assisted interventions are far more likely to lead to longer, cheaper, more stable solutions for the community, and for the person suffering from mental illness.

AB 1810 allowed, but does not require trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed treatment program is consistent with the needs of the defendant and the safety of the community. By granting courts the ability to divert those suffering from mental illness into treatment at an early stage in the proceedings, AB 1810 seeks to reduce recidivism rates for mentally ill defendants, and to avoid unnecessary and unproductive costs of trial and incarceration.

Since the enactment of AB 1810, some commenters have articulated a concern that a court could theoretically divert a mentally ill defendant charged with rape

and murder under AB 1810. Others have asked for clarification on whether victim restitution should be part of any grant of diversion under this section. This bill seeks to address those concerns.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, negligible fiscal impact.

SUPPORT: (Verified 8/24/18)

Anti-Recidivism Coalition
Disability Rights California
Friends Committee on Legislation
National Association of Social Workers, California Chapter

OPPOSITION: (Verified 8/24/18)

None received

ASSEMBLY FLOOR: 79-0, 8/28/18

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bonta, Brough, Burke, Caballero, Calderon, Carrillo, Cervantes, Chau, Chávez, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Rivas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: McCarty

Prepared by: Mary Kennedy / PUB. S. /
8/28/18 21:28:01

**** END ****

PROOF OF SERVICE BY MAIL
(Cal. Rules of Court, rules 1.21, 8.50.)

(Court of Appeal No. G054674; Supreme Court No. S252220 ; People v. Eric Jason Frahs)

I, Will Bookout, declare: I am employed in the County of San Diego, California. I am over 18 years of age and not a party to the within entitled cause; my business address is 555 West Beech Street, Suite 300, San Diego, California 92101-2939.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s):

REQUEST FOR JUDICIAL NOTICE

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively as follows:

Attorney General
(e-service only to
SDAG.Docketing@doj.ca.gov)

Orange County District Attorney
(e-service via
Appellate@da.ocgov.com)

Superior Court, County Courthouse
700 Civic Center Drive West, 1st Floor
Santa Ana, CA 92701

Court of Appeal Fourth Appellate
District, Division III
(via TrueFiling)

Eric Jason Frahs
(c/o Appellate Defenders)

California Supreme Court
Earl Warren Building
350 McAllister Street Room 1295
San Francisco, CA 94102-4738
(with e-service to
<http://www.courts.ca.gov/24590.htm>)

Jay Joseph Moorhead
Office of the Public Defender
14 Civic Center Plaza
Santa Ana, CA 92701

I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare that I electronically submitted a copy of this document to the United States Supreme Court on its website at <http://www.courts.ca.gov/24590.htm> in compliance with the court's Terms of Use.

I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed at San Diego, California, on April 18, 2019, at 12:28 pm.

Will Bookout
(Typed Name)

/s/

(Signature)