KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVEN T. OETTING
Supervising Deputy Attorney General
QUISTEEN S. SHUM
Deputy Attorney General
State Bar No. 174299
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2613
Fax: (619) 645-2012
Email: Quisteen.Shum@doj.ca.gov
*Attorneys for Respondent*

SUPREME COURT
FILED
MAY 11 2012
Frederick K. Ohlrich Clerk
Deputy

# In the Supreme Court of the State of California

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| **KELVIN HARRISON,**<br>**Plaintiff and Appellant,**<br>**v.**<br>**BOARD OF PAROLE HEARINGS,**<br>**Defendant and Respondent,**<br>**THE PEOPLE OF THE STATE OF CALIFORNIA,**<br>**Real Party in Interest.** | Case No. S199830<br>Fourth Appellate District, Division Two, Case No. E051465<br>San Bernardino County Superior Court, Case No. FELSS1001624 |

## RESPONDENT'S MOTION FOR JUDICIAL NOTICE

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

Pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 8.252(a) and 8.630(h), respondent respectfully moves this Court to take judicial notice of the attached documents from the legislative history of the Mentally Disordered Offender ("MDO") Act (Pen. Code, § 2960 et seq.). Because the question presented for review in the instant case is an issue of statutory interpretation, the attached documents are relevant to show that the term "criteria" in Penal Code section 2962 was meant to refer to the prescribed substantive criteria which must be met in order to certify a prisoner as an MDO and did not include the procedural prerequisite of the evaluation and certification process of Penal Code section 2962, subdivision (d).

The relevant documents, which were not presented to the trial court and do not relate to proceedings occurring after the judgment in the instant case, were found in the following files:

1) The files of the Assembly Committee on Public Safety -

   a) Dan McCorquodale, "Statement SB 1296 (McCorquodale) – Assembly Public Safety Committee – August 19, 1985" (*attached hereto as Exhibit A*);

   b) Senate Committee on Judiciary, Analysis of Senate Bill 1296 as amended April 18, 1985 (*attached hereto as Exhibit B*);

   c) Legislative Analyst, Analysis of Senate Bill 1296, May 2, 1985 (*attached hereto as Exhibit C*);

   d) Legislative Analyst, Analysis of Senate Bill 1296, August 29, 1985 (*attached hereto as Exhibit D*);

2) The files of the Senate Committee on Judiciary -

a) Dan McCorquodale, "Background on Senate Bill 1296 – March 26, 1985" (*attached hereto as Exhibit E*);

b) Dan McCorquodale, "Statement by Senator McCorquodale on Senate Bill 1296 – March 26, 1985" (*attached hereto as Exhibit F*);

3) The files of the Assembly Republican Caucus -

a) Assembly Committee on Public Safety, Conference Committee Report, September 10, 1985 (*attached hereto as Exhibit G*);

b) Senate Rules Committee, "In Conference" Report (*attached hereto as Exhibit H*);

c) State Department of Mental Health, Bill Analysis, July 25, 1985 (*attached hereto as Exhibit I*);

4) The files of the Office of Senate Floor Analyses -

a) Senate Rules Committee, "Conference Completed" Report (*attached hereto as Exhibit J*);

b) Third Reading Analysis, May 8, 1985 (*attached hereto as Exhibit K*);

5) The Governor's Chaptered Bill File -

a) Department of Corrections and Rehabilitation, Enrolled Bill Report on Senate Bill 1296, September 25, 1985 (*attached hereto as Exhibit L*);

b) State Department of Mental Health, Enrolled Bill Report on Senate Bill 1296, September 27, 1985 (*attached hereto as Exhibit M*);

Each of the above-referenced documents is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of "Official acts of the

legislative, executive, and judicial departments of the United States and of any state of the United States." Pursuant to this authority, it is appropriate to take judicial notice of the following items: a legislator's statement (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [sponsor's memos]; *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, fn. 3 [individual legislators' (including co-authors') comments from the Assembly and Senate committee bill files]; *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219, fn. 9 [legislators' memos]); an enrolled bill report (*People v. Manzo* (2012) 53 Cal.4th 880, 886; *People v. Allen* (2007) 42 Cal.4th 91, 97); a legislative committee's analysis (*People v. Allen, supra*, 42 Cal.4th at p. 97, fn. 3 [Senate committee analysis]; *People v. Epps* (2001) 25 Cal.4th 19, 25 [Assembly committee analysis]; *People v. Snyder, supra*, 22 Cal.4th at p. 309 [Senate committee analysis]; *People v. Nguyen* (1999) 21 Cal.4th 197, 206 [Assembly and Senate committee analyses]); a third reading analysis (*People v. Robles* (2000) 23 Cal.4th 1106, 1119 [Assembly third reading analysis]); a legislative committee's report (*People v. Eubanks* (1997) 14 Cal.4th 580, 591, fn. 3; *Hutnick v. U.S. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7); and, the Legislative Analyst's analysis (*People v. Benson* (1998) 18 Cal.4th 24, 33; *People v. Snook* (1997) 16 Cal.4th 1210, 1218).

As noted in footnote 17 of the respondent's brief on the merits (which is being filed concurrently with this motion), the legislative history of the MDO Act includes several documents which referred to the MDO certification process as a criterion for the commitment of an MDO. Those others documents were found in the following files:

1) The files of the Senate Committee on Judiciary –
    a) Citizens Advisory Council, letter to Senator Dan McCorquodale, April 22, 1985 (*attached hereto as Exhibit N*);

2) The files of the Senate Committee on Appropriations –

a) Department of Finance, Bill Summary of Senate Bill 1296 – last amended April 18, 1985 (*attached hereto as Exhibit O*);

3) The files of the Assembly Republican Caucus –

a) State Department of Mental Health, Bill Analysis of Senate Bill 1296, April 22, 1985 (*attached hereto as Exhibit P*);

4) The Governor's Chaptered Bill File –

a) Department of Finance, Bill Summary of Senate Bill 1296 – last amended September 10, 1985 (*attached hereto as Exhibit Q*);

5) The files of Senator Dan McCorquodale –

a) Legislative Counsel Bureau, Letter of Opinion, December 5, 1985 (*attached hereto as Exhibit R*);

b) "Fact Sheet for Senate Bill 1296 (McCorquodale)" (*attached hereto as Exhibit S*);

c) Department of Finance, Bill Summary of Senate Bill 1296 – last amended June 25, 1985 (*attached hereto as Exhibit T*).

Because the attached documents are relevant to answering the question of whether compliance with the certification process of Penal Code section 2962, subdivision (d), is a factor that must be shown to the trier of fact at a hearing under Penal Code section 2966, subdivision (b),

respondent respectfully requests that this Court take judicial notice of the attached documents.

Dated: May 9, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVEN T. OETTING
Supervising Deputy Attorney General

QUISTEEN S. SHUM
Deputy Attorney General
*Attorneys for Respondent*

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STATEMENT SB 1296 (McCorquodale)
Assembly Public Safety Committee
August 19, 1985

ASSEMBLYMEMBERS:

BETWEEN 5 & 10% OF THE PRISON POPULATION HAS BEEN CLASSIFIED AS NEEDING PSYCHIATRIC CARE. PRIOR TO THE PASSAGE OF THE DETERMINATE SENTENCE, THOSE VIOLENT OFFENDERS WHO HAD SERIOUS MENTAL ILLNESS COULD BE HELD UNTIL NECESSARY TREATMENT WAS COMPLETED. THE DETERMINATE SENTENCE REMOVED THIS FLEXIBILITY SO THAT UNDER PRESENT LAW, ONCE A PRISONER HAS FINISHED HIS OR HER TERM, IF HE OR SHE HAS A MENTAL ILLNESS THAT WAS A CAUSE OR AGGRAVATING FACTOR OF THEIR CRIME, THEY CANNOT BE INVOLUNTARILY TREATED WITHOUT USE OF THE LPS PROCEDURE, WHICH IS EXTREMELY DIFFICULT.LPS , WHICH IS INVOLUNTARY CIVIL COMMITMENT, REQUIRES A SHOWING OF PRESENT DANGEROUSNESS. THIS IS OFTEN IMPOSSIBLE WITH PRISONERS SINCE THEY HAVE BEEN IN A GUARDED SITUATION FOR YEARS. THIS REQUIREMENT OF LPS IS NECESSARY TO PROTECT THE CIVIL LIBERTIES OF THE MENTALLY ILL. PRISONERS, HOWEVER, ACCORDING TO THE UNITED STATES SUPREME COURT, ARE CLEARLY A DIFFERENT CLASS. THEY HAVE CLEARLY DEMONSTRATED THEIR DANGEROUSNESS BY THE CRIMES FOR WHICH THEY WERE SENTENCED TO PRISON.

ONE EXAMPLE IS STEVEN HINDS WHO WAS RELEASED IN 1982. HE SUFFERED FROM PSYCHOSIS. HE IS NOW BACK IN PRISON FOR MURDERING A WOMAN IN SAN LUIS OBISPO. ANOTHER EXAMPLE OF THE PROBLEM IS JODELL WILLIAMS. HE WAS SENTENCED IN 1982 FOR ROBBERY WITH USE OF A DEADLY WEAPON. HE WAS DIAGNOSED AS SCHIZOPHRENIC, AND PRIOR TO HIS CONVICTION SPENT TWO MONTHS AT NAPA STATE HOSPITAL AS

INCOMPETENT TO STAND TRIAL. HE WAS PAROLED ON MARCH 27, 1984, AND WAS ARRESTED THIS JANUARY ON FOUR COUNTS OF ATTEMPTED MURDER.

**SB 1296** WILL SOLVE THE DILEMMA THAT HAS PERPLEXED THE LEGISLATURE SINCE ENACTMENT OF DETERMINATE SENTENCING, HOW TO CONTROL CRIMINALS WHO HAVE SERIOUS MENTAL ILLNESS WITHOUT DISTURBING THE PROTECTION OF THE LPS ACT FOR CIVILIANS.

**SB 1296** REQUIRES THE DEPARTMENT OF MENTAL HEALTH TO PROVIDE TREATMENT FOR PAROLEES WHO MEET THE FOLLOWING CRITERIA:

1) THE PRISONER WAS CONVICTED OF A CRIME IN WHICH HE OR SHE USED FORCE OR VIOLENCE OR CAUSED SERIOUS BODILY INJURY.
2) THE PRISONER HAS A SEVERE MENTAL DISORDER WHICH WAS TREATED WHILE HE OR SHE WAS IN PRISON.
3) THE SEVERE MENTAL DISORDER CAUSED, WAS ONE OF THE CAUSES OF, OR WAS AN AGGRAVATING FACTOR IN THE COMMISSION OF THE CRIME FOR WHICH THE PRISONER WAS SENTENCED TO PRISON.
4) THE PRISONER'S SEVERE MENTAL DISORDER IS NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION.

AFTER THE PAROLE PERIOD, IF THE SEVERE MENTAL DISORDER IS STILL NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION, THE APPROPRIATE DISTRICT ATTORNEY MAY FILE A PETITION WITH THE COURT FOR A ONE YEAR COMMITMENT OF INVOLUNTARY TREATMENT. THE DISTRICT ATTORNEY MUST PROVE ALL OF THE FACTORS NECESSARY FOR TREATMENT ON

PAROLE, AND THAT TREATMENT DURING THE PAROLE PERIOD HAS BEEN CONTINUOUSLY PROVIDED AND THAT THE ILLNESS IS NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION. LIKE LPS , THERE IS NO LIMIT ON THE NUMBER OF TIMES A COURT CAN RECOMMIT A PATIENT.

SB1296 AVOIDS THE MURKY AREA OF PREDICTING DANGEROUSNESS, WHICH SCHOLARS, LIKE BERNARD DIAMOND, AND THE CALIFORNIA AND UNITED STATES SUPREME COURTS HAVE SAID IS HIGHLY UNRELIABLE. SB 1296 RECOGNIZES THE COMPELLING STATE INTEREST AND NECESSITY IN TREATING THE SEVERE MENTAL DISORDERS OF PRISONERS WHO HAVE COMMITTED A VIOLENT CRIME WHERE THE SEVERE MENTAL DISORDER WAS A CAUSE OR AGGRAVATING FACTOR OF THE CRIME.

**SENATE COMMITTEE ON JUDICIARY**
**Bill Lockyer, Chairman**
**1985-86 Regular Session**

SB 1296 (McCorquodale)
As amended April 18
Penal Code
MRR

SB 1296

MENTALLY DISORDERED VIOLENT OFFENDERS

HISTORY

Source: Joint Committee for the Revision of the Penal Code

Prior Legislation: AB 29 (1979) - Vetoed
SB 1601 (1978) - Held in this Committee
AB 1770 (1978) - Held in Assembly Criminal Justice Committee
SB 132 (1977) - Held in Assembly Criminal Justice Committee

Support: Attorney General; California Psychiatric Association; California Conference of Local Mental Health Directors; CMA

Opposition: Friends Committee on Legislation; CACJ; CPDA; ACLU

KEY ISSUE

SHOULD A MECHANISM BE ESTABLISHED FOR THE IN- OR OUTPATIENT TREATMENT, RENEWABLE FOR SUCCESSIVE ONE-YEAR PERIODS, OF MENTALLY DISORDERED PAROLEES WHO HAD BEEN SENTENCED TO PRISON FOR CRIMES INVOLVING FORCE OR VIOLENCE?

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PURPOSE

Existing law permits the Director of Corrections, with the approval of the Department of Mental Health to transfer any mentally ill person to a state hospital for treatment. In addition under existing law, a person judged to be mentally disordered and a danger to others may be civilly committed for renewable periods not exceeding 180 days.

This bill would permit the Board of Prison Terms to order that, as a condition of parole, a mentally disordered inmate accept treatment on an in- or outpatient basis until her mental disorder was put into remission.

The purpose of this bill is to permit confinement of specified mentally disordered inmates after the expiration of their sentences.

1. Ineffectiveness of present civil commitment procedures

Existing law allows a 72-hour period of evaluation for persons who are allegedly a danger to others, a subsequent 14-day commitment if they are certified as dangerous to others, and a 180-day period of postcertification involuntary custody when the person is found to be mentally ill, demonstrably dangerous, and to have committed or threatened an assault on someone prior to or during custody. This procedure may be used to commit a prisoner civilly prior to her parole release.

However, according to the author, it is generally ineffective for mentally ill

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inmates. The reasons for this ineffectiveness are the following:

-- The law requires proof of future dangerousness;

-- This proof is regarded by both courts and psychiatrists as problematic to achieve;

-- Courts have usually insisted on recent evidence to support a finding of future dangerousness--a standard difficult to meet with prisoners who live in a strongly restrained environment.

In addition the author states that even if one six month's commitment is ordered, subsequent ones are "next to impossible."

2. Inadequacy of Penal Code Section 2684

Existing Penal Code Section 2684 permits the transfer to a state hospital of any mentally ill prisoner whom the Director of Mental Health agrees to accept.

Prior to July 1, 1982, this section was seldom used. At that time only 70 patients had been transferred to Atascadero State Hospital pursuant to its provisions.

However, during Fiscal Year 1982-83, 126 admissions occurred, and during the following fiscal year, that number grew to 206. Including the figures from this year, 399 patient-prisoners from CDC are now housed at Atascadero. These people may remain there until they no longer benefit from treatment, but in no case beyond the expiration of their sentences.

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According to the Department of Mental Health, some of these patients have been transferred as a prelude to civil commitment proceedings. However, courts have proven reluctant to establish conservatorships upon expiration of a Penal Code sentence, even when such an approach is strongly recommended by hospital examiners.

3. SB 1296 mechanism

This bill is aimed at the over 2000 prisoners now in the Department of Corrections who have a medical/psychiatric classification. According to the author's office, this bill "will provide a means to make sure the mental disorders of these persons are under control before their final release."

(a) Affected prisoners

SB 1296 would mandate that, as a condition of parole, prisoners who met the following criteria be required to be treated by the Department of Mental Health:

-- The prisoner had a mental disorder that was not in remission or that could not be kept in remission. (The bill exempts sociopaths.)

-- The mental disorder caused, was one of the causes of, or was an aggravating factor in the commission of the crime for which the prisoner was sentenced.

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HOW WOULD THIS DETERMINATION BE MADE FOR INMATES SENTENCED PRIOR TO THE BILL'S ENACTMENT IF MENTAL ILLNESS HAD NOT BEEN AN ISSUE AT TRIAL? WHAT TYPE OF RECORD WOULD BE NECESSARY TO MEET THIS CRITERION?

-- The prisoner had been in treatment for 90 days or more for the mental illness.

GIVEN THE LENGTH OF CURRENT SENTENCES, SHOULD THE BILL CONTAIN A "WASHOUT" PERIOD FOR TREATMENT IN ORDER NOT TO DISCOURAGE INMATES FROM SEEKING TREATMENT?

-- The prisoner was convicted of a crime in which she used force or violence and caused serious bodily injury.

(b) Certification to and hearing by Board of Prison Terms

The chief medical officer of the Department of Corrections, its chief psychiatrist, and the person in charge of treating the prisoner would have to certify the above criteria to the Board of Prison Terms. The prisoner could request a hearing before the Board in order to establish that the certification was incorrect. At this hearing the prisoner would have the burden of proof by a preponderance of the evidence.

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If the prisoner did not meet this burden, the Board would order her confined in the Department of Mental Health unless that Department certified that she would not be a danger while on outpatient status.

If the prisoner recovered her mental health at any time during parole, the Department would discontinue the treatment.

WOULD THE PRISONER THEN BE RELEASED ON PAROLE?

(c) Recommitment process

Prior to the end of her parole, a state hospital or county mental health director or the Director of Corrections could petition the district attorney of the committing county to extend the parolee's involuntary treatment if her illness was not in remission.

At the superior court hearing on the issue, the parolee would have the right to appointed counsel and to a jury trial. The need for extension would have to be proven by a preponderance of the evidence.

Recommitments would be for successive one-year periods.

4. CPA's concerns with existing systems

The California Psychiatric Association is supporting SB 1296 in part because of its

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concern with existing systems. In a December 13 letter to Senator Presley, who is coauthoring this bill, the CPA discussed four issues that relate to this subject.

-- NGI's

Since the adoption of Proposition 8 with its return to the restrictive M'Naghten insanity test, fewer defendants are being found NGI. As a result more seriously mentally disordered offenders are now in prison.

-- Prison psychiatric treatment

The growing mentally ill inmate population includes many delusional patient-prisoners who do not respond well to isolation and medication alone and who often do not fully understand the purpose of their incarceration.

-- Parole outpatient clinics

These clinics may require parolees to remain in treatment for only three years after release from prison (the statutory maximum parole period). Thus when a parolee suffers an exacerbation of her illness, often the parole officer's only recourse is to return the person to prison on a parole violation so that her psychiatric treatment may continue.

-- Funding difficulties

Currently more than one half of all state hospital beds are filled with judicially

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committed or prisoner patients, leaving fewer beds for civilly committed patients in the few remaining hospitals for the mentally ill. Funding for the latter population has also been diverted to pay for the expanding penal code patient population.

5. Department of Mental Health concerns

Although the Department of Mental Health has not taken a position on SB 1296, it has made public comment on the issues involved. In testimony before a December 11, 1984 hearing of the Assembly Select Committee on Mental Health and the Senate Subcommittee on Mental Health, Developmental Disabilities, and Genetic Diseases, the Department enumerated three types of problems that offenders present the state hospital system:

-- Their legal situation makes treatment much more difficult. They are involved in the "adversary system of prosecution and defense, which has the unfortunate tendency to reinforce [their] denials of illness and . . . resistance to treatment." Moreover, treatment may be arbitrarily interrupted at any time when the legal process requires transport to local jails prior to court hearings.

-- Because of cautious and conservative attitudes by courts, hospital staffs, and community agencies, moving offenders out of hospitals is difficult even when it would be clinically appropriate to do so.

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-- Legal constraints result in waste of state hospital resources when they are applied to extended confinements rather than to appropriate treatment. Offenders are, according to the Department of Mental Health, "highly-resistive, manipulative, shrewd, and often dangerous individuals," with whom the state hospital system has difficulty in dealing.

Moreover, in its testimony at the December hearing, the Department described the medical problems that violent offenders present, pointing to the fact that the effectiveness of treating mentally disordered sex offenders has been much debated in recent years. (This program was terminated by the Legislature in 1982.)

6. Parole time for mentally disordered offenders

Under existing law the term of parole for determinately sentenced inmates is not exceeding three years, with release following one year absent good cause for extension. Under SB 1296 the term for parole of previously mentally disordered inmates would be two years, absent good cause for extension.

7. End-run around dangerousness

In effect SB 1296 is an end run around the danger standard. Recently a federal court held that a person may not be confined as dangerous and mentally ill unless that person poses an imminent danger to society. Suzuki v. Yuen (1980) 617 F.2d 173, 178 (9th

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Cir.). And mental health professionals generally agree that they are unable to predict dangerousness with accuracy. In his background information on this bill, the author mentions People v. Murtishaw (1981) 29 Cal.3d 733, in which the California Supreme Court cites authority to the effect that "whatever may be said for the reliability and validity of psychiatric judgments in general, there is literally no evidence that psychiatrists reliably and accountably can predict dangerous behavior. To the contrary, such predictions are wrong more often than they are right." Id. at 768.

This bill solves the problem of dangerousness simply by eliminating it as a criterion for extended commitment of mentally ill offenders.

8. Opponents' constitutional concerns

The ACLU objects to the bill as constitutionally overbroad because it does not require this finding of imminent dangerousness. In contrast, the Attorney General, in his support letter, argues that because SB 1296's extension procedure is based on treatment, it should survive constitutional challenge.

In his letter, the Attorney General cites In re Gary W. (1971) 5 Cal.3d 296, in which the California Supreme Court held that extended confinement of a Youth Authority ward was not unconstitutional given the "demonstrably civil purpose" of the provision in question and absent any evidence that persons committed under it are incarcerated in penal institutions among the general prison

(More)

population or that they are detained without treatment. Id. at 302.

However, a distinction that the Attorney General fails to note is that the Gary W. court was dealing with a statute requiring a determination that release of the mentally disordered ward would be physically dangerous to the public. SB 1296, of course, requires no such finding.

Although the precise issue has not been decided by the United States Supreme Court, it did find in Baxstrom v. Herold (1966) 383 U.S. 107, that a New York prisoner could not be retained in a Department of Correction hospital past the expiration of his sentence unless the extension procedure met the criteria for civil commitments, including a finding of dangerousness. As the Baxstrom Court stated: "[T]here is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other commitments." Id. at 112.

If the California Supreme Court follows this reasoning, SB 1296 will meet with some constitutional difficulties.

9. Friends Committee concerns

The Friends Committee is opposing this bill because of a belief that many people in prison are mentally disordered and should have been placed in the mental health system initially.

In addition the Friends believe that because society is attempting to restrict the parolee's freedom, it, and not the prisoner,

(More)

should have the burden of proving that confinement is necessary. Finally, according to this opponent, SB 1296 is "a backdoor way to return us tc the days of the indeterminate sentence for a select group of people."

**********

Legislative Analyst
May 2, 1985

ANALYSIS OF SENATE BILL NO. 1296 (McCorquodale)
As Amended in Senate April 18, 1985
1985-86 Session

Fiscal Effect:

Cost:

1. Unknown, potentially major (over $1 million), annual General Fund costs to Departments of Corrections and Mental Health for treatment of mentally-disordered parolees.

2. Unknown potential capital outlay costs for Department of Mental Health.

3. Unknown local costs for court hearings to the extent that district attorneys file petitions for recommitment of parolees.

Revenue: None.

Analysis:

This bill requires that parolees from state prison who meet certain criteria receive either inpatient or outpatient treatment from the Department of Mental Health as a condition of parole. In addition, the bill:

- Specifies the procedure for determining whether a parolee meets the criteria and thus must receive such treatment. Only parolees who served prison sentences for violent offenses in which a mental disorder contributed to the offense would be subject to the

bill's provisions. In addition, the parolees would have to have received at least 90 days of treatment for the mental disorder while in prison, and meet other criteria.

- o Provides that the parolee may appeal the certification decision.

- o Authorizes a county district attorney to seek recommitment of a parolee for successive one-year periods beyond the parole period if the mental disorder is not in remission. Courts would conduct a jury trial to determine the need for extension. If the parolee is indigent, the bill specifies that he or she shall be represented by a county public defender or the State Public Defender.

- o Specifies that these provisions apply to persons incarcerated before, as well as after, the effective date of the measure.

Existing law permits the Director of Corrections, with the approval of the Department of Mental Health, to transfer mentally ill inmates to a state hospital for treatment. This treatment, however, cannot go beyond expiration of a prison sentence. In addition, existing law provides that any mentally disordered person can be required to undergo treatment for successive periods of up to 180 days.

Fiscal Effect

The bill would result in additional General Fund costs to the Department of Corrections for treatment of parolees found to have mental disorders. Specifically, the department would be required to pay the Department of Mental Health for treatment of the parolees. The department also would incur additional incarceration costs for inmates who refuse to accept treatment as a condition of parole.

Factors that would determine costs to the Department of Corrections include, for example, the number of inmates who were sentenced to prison for violent crimes in which mental disorders were a contributing factor, the number of inmates who have mental disorders at the time of their parole, the number of inmates assigned to inpatient versus outpatient status by the Department of Mental Health, the length of the treatment period, and the number of mentally-disordered parolees who refuse mental health treatment and thus remain in prison.

The bill could increase the costs of the Department of Mental Health for mental health treatment to the extent that it results in more parolees being committed to state hospitals after the expiration of their parole, than would be committed under existing provisions of law which apply to mentally-disordered persons in general. Factors that would determine costs to the Department of Mental Health include the number

of such parolees and the number of persons whose treatment would be extended for successive one-year periods. In addition, the bill could result in a need for additional beds in mental hospitals, which could involve capital outlay costs.

Although it is impossible to estimate precisely the cost of the measure because of many uncertainties regarding the number of persons affected by the bill and the length of treatment that would be required, in our judgment the General Fund costs to the Departments of Corrections and Mental Health would be potentially major (over $1 million). Generally it costs much more to treat a person in a mental hospital than to supervise a parolee in the community. The Department of Mental Health estimates the per capita cost of inpatient treatment is between $50,000 and $60,000 and outpatient treatment is approximately $10,000. The Department of Corrections estimates the per capita cost to supervise a parolee is approximately $2,000. Neither the Department of Corrections nor the Department of Mental Health has estimated the cost of the bill.

The Board of Prison Terms indicates it would incur negligible, absorbable costs to comply with the bill's certification and appeals process.

The State Public Defender's office could incur unknown costs to the extent that it is appointed by the court to represent indigent parolees whom the county district attorneys seek to recommit for mental health

SB 1296--contd

treatment beyond the end of their parole period. The State Public Defender has not estimated the cost of the bill.

Local governments could incur additional costs to the extent that county district attorneys file petitions seeking to recommit parolees to the Department of Mental Health. These costs include prosecution, public defense, and court costs for recommitment hearings. Such costs would not be state reimbursable.

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Legislative Analyst
August 29, 1985

ANALYSIS OF SENATE BILL NO. 1296 (McCorquodale)
As Amended in Assembly June 25, 1985
1985-86 Session

SB 1296 (Am. 6/25/85)

Fiscal Effect:

Cost:

1. Unknown, potentially major (over $1 million), annual General Fund costs to Departments of Corrections and Mental Health for treatment of mentally-disordered parolees.

2. Unknown potential capital outlay costs for Department of Mental Health.

3. Unknown local costs for court hearings to the extent that district attorneys file petitions for recommitment of parolees.

Revenue: None.

Analysis:

This bill requires that parolees from state prison who meet certain criteria receive either inpatient or outpatient treatment from the Department of Mental Health as a condition of parole. In addition, the bill:

- Specifies the procedure for determining whether a parolee meets the criteria and thus must receive such treatment. Only parolees who served prison sentences for violent offenses in which a mental disorder contributed to the offense would be subject to the

bill's provisions. In addition, the parolees would have to have received at least 90 days of treatment for the mental disorder within the year prior to parole or release from prison, and meet other criteria.

- Provides that the parolee may appeal the certification decision.

- Authorizes a county district attorney to seek recommitment of a parolee for successive one-year periods beyond the parole period if the mental disorder is not in remission. Courts would conduct a jury trial to determine the need for extension. If the parolee is indigent, the bill specifies that he or she shall be represented by the county public defender.

- Specifies that these provisions apply to persons incarcerated before, as well as after, the effective date of the measure.

- Specifies that the bill become operative July 1, 1986.

Existing law permits the Director of Corrections, with the approval of the Department of Mental Health, to transfer mentally ill inmates to a state hospital for treatment. This treatment, however, cannot go beyond expiration of a prison sentence. In addition, existing law provides that any mentally

disordered person can be required to undergo treatment for successive periods of up to 180 days.

Fiscal Effect

The bill would result in additional General Fund costs to the Department of Corrections for treatment of parolees found to have mental disorders. Specifically, the department would be required to pay the Department of Mental Health for treatment of the parolees. The department also would incur additional incarceration costs for inmates who refuse to accept treatment as a condition of parole.

Factors that would determine costs to the Department of Corrections include, for example, the number of inmates who were sentenced to prison for violent crimes in which mental disorders were a contributing factor, the number of inmates who have mental disorders at the time of their parole, the number of inmates assigned to inpatient versus outpatient status by the Department of Mental Health, the length of the treatment period, and the number of mentally-disordered parolees who refuse mental health treatment and thus remain in prison.

The bill could increase the costs of the Department of Mental Health for mental health treatment to the extent that it results in more parolees being committed to state hospitals after the expiration of their parole, than would be committed under existing provisions of law which apply to mentally-disordered

persons in general. Factors that would determine costs to the Department of Mental Health include the number of such parolees and the number of persons whose treatment would be extended for successive one-year periods. In addition, the bill could result in a need for additional beds in mental hospitals, which could involve capital outlay costs.

Although it is impossible to estimate precisely the cost of the measure because of many uncertainties regarding the number of persons affected by the bill and the length of treatment that would be required, in our judgment the General Fund costs to the Departments of Corrections and Mental Health would be potentially major (over $1 million). Generally it costs much more to treat a person in a mental hospital than to supervise a parolee in the community. The Department of Mental Health estimates the per capita cost of inpatient treatment is between $50,000 and $60,000 and outpatient treatment is approximately $10,000. The Department of Corrections estimates the per capita cost to supervise a parolee is approximately $2,000. Neither the Department of Corrections nor the Department of Mental Health has estimated the total cost of the current version of the bill.

The Board of Prison Terms indicates it would incur negligible, absorbable costs to comply with the bill's certification and appeals process.

Local governments could incur additional costs to the extent that county district attorneys file

petitions seeking to recommit parolees to the Department of Mental Health. These costs include prosecution, public defense, and court costs for recommitment hearings. Such costs would not be state reimbursable.

42/s4

STATE CAPITOL
ROOM 4032
SACRAMENTO, CA 95814
(916) 445-3104

801 18TH ST., SUITE E
MODESTO, CA 95354
(209) 576-6231

100 PASEO DE SAN ANTONIO
SUITE 211
SAN JOSE, CA 95113
(408) 277-1470

COMMITTEES:
LOCAL GOVERNMENT,
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HEALTH CARE SERVICES
AGRICULTURE AND WATER RESOURCES
PUBLIC EMPLOYMENT AND RETIREMENT
NATURAL RESOURCES AND WILDLIFE

# Senate

# California Legislature

DAN McCORQUODALE
SENATOR
TWELFTH DISTRICT

Background on Senate Bill 1296
March 26, 1985

Under current law prisoners on parole may be given psychiatric treatment. Only prisoners who have abused children are required to be psychologically evaluated, and if needed, given counseling as a condition of parole [PC§3002].

The Department of Corrections, in concurrence with the Department of Mental Health, may petition the court for involuntary treatment under LPS if a prisoner is dangerous to others or gravely disabled. The standard for LPS, however, is often too difficult to meet. The standard is proving beyond a reasonable doubt that the prisoner presents a demonstrated danger of substantial harm to others in order to be involuntarily treated. Even if one is successful on one six month's commitment, another commitment is next to impossible, and outpatient treatment cannot be mandatory.

Under LPS, a person can be held involuntarily for 72 hours without a hearing. After 72 hours, the person can be held for 14 days based on the treating physician's certification, which can be judically reviewed. Thereafter, to have a six months commitment, requires eye witnesses who can testify they have seen

dangerous behavior while the person was being treated or immediately prior to admission. After a two week hospitalization under medication, however, the more severe patients begin to look improved according to Dr. O'Conner, Director of the State Department of Mental Health.

Secondly, predicting dangerousness is a murky business. In 1966, as a result of the U. S. Supreme Court case of Baxtrom vs. Herold, 989 patients were released from two New York state hospitals for the criminally insane. All were transferred to other state hospitals under civil commitments. Only 26 of 967 patients during the five years following the decision had committed or threatened any act that ws sufficiently dangerous to require retransfer to the maximum security hospital. Two of the released patients had committed murder.

In 1981, in People vs Murtishaw, the California Supreme Court prohibited psychiatric testimony in the penalty phase of a death penalty case on future dangerousness of the defendant. The court cited many authorities to the effect that "whatever may be said for the reliability and validity of psychiatric judgments in general, there is literally no evidence that psychiatrists reliabily and accountably can predict dangerous behavior. To the contrary, such predictions are wrong more often than they are right."

As of December 31, 9184, there were 2108 prisoners with a medical/pshcyaitric classification. Of these 2108, 1726 (81.9%) had committed violent offenses, [Homocide- 687 (32.6%; Robbery - 259 (12.3%); assault 200 (9.5%); Sex crimes 487 (23.1%); kidnapping 93 (4.4%)].

SB 1296 will provide the means to make sure the mental disorders of these persons are under control before their final release.

SB 1296 requires the Department of Mental Health to provide treatment for parolees who meet the following criteria:

1) The prisoner was convicted of a crime in which he or she used force or violence or caused serious bodily injury.

2) The prisoner has a mental disorder which was treated while he or she was in prison.

3) The mental disorder caused, was one of the causes of, or was an aggravating factor in the commission of the crime for which the prisoner was sentenced to prison.

4) The prisoner's mental disorder is not in remission or cannot be kept in remission.

After the parole period, if the illness is still not in remission or cannot be kept in remission, the appropriate district attorney may file a petition with the court for a one year extension of involuntary treatment. The district attorney must prove by a preponderance of the evidence all of the factors necessary for treatment on parole and that treatment during the parole period has been continuously provided and that the illness is not in remission or cannot be kept in remission. There is no limit on the number of times a court can grant a one year extension.

APITOL
3032
CA 95814
3104

SUITE E
A 95354
6231

100 PASEO DE SAN ANTONIO
SUITE 211
SAN JOSE, CA 95113
(408) 277-1470

COMMITTEES:
LOCAL GOVERNMENT,
VICE-CHAIR
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NATURAL RESOURCES AND WILDLIFE

# Senate

# California Legislature

DAN McCORQUODALE
SENATOR
TWELFTH DISTRICT

## STATEMENT BY SENATOR McCORQUODALE ON SENATE BILL 1296

March 26, 1985

Under present procedures, it frequently happens that a person, who committed a violent offense as the result of, or aggravated by, a serious mental illness, is placed on parole or released at the end of a prison term, even though the mental illness, which was instrumental in the original violent behavior, still persists.

My Senate bill SB 1296, with Senator Presley as Principal Coauthor, is designed to protect the public safety in such situations. An example or two will suffice to illustrate the problem.

Steven Hinds had suffered for a prolonged period from schizophrenia for which he was treated in prison. However, his illness was not in remission when he was released in 1982. He is now back in prison for murdering an 86 year old woman in San Luis Obispo during a burglary.

Another example of a disaster waiting to happen concerns a man to be released next month after serving his term for second degree murder. He suffers from severe delusions and at times hallucinations. This delusional system was a significant contributing factor in his having committed the murder of his ex-wife's boy friend.

My bill would facilitate the involuntary commitment of such persons for treatment by the state mental health system. They would not remain in correctional institutions, and could be treated on either an inpatient or outpatient basis as appropriate.

The present civil commitment procedure is nearly always ineffective in the cases we are talking about. The reason for this is three-fold. First, the law requires proof that the person will be a future danger to others. Secondly, this proof of future dangerousness is regarded both by courts and psychiatrists as extremely murky. And third, as a result, the courts have generally insisted on recent and "fresh" evidence to support a finding of future dangerousness.

Persons serving prison terms, however, live in a strongly restrained environment so that the "fresh" evidence seldom is readily forthcoming.

My bill would not disturb the present civil commitment procedure which may well be needed to protect the civil liberties of the mentally ill. The bill deals solely with a limited class of persons convicted of violent offenses.

SB 1296 will solve the dilemma that has perplexed the Legislature since the enactment of determinate sentencing, how to control criminals who have serious mental illness without disturbing the protections of the civil commitment law for others.

SB 1296 requires the Department of Mental Health to provide treatment for parolees who meet the following requirements:

1) The prisoner was convicted of a crime involving force or violence or causing serious bodily injury.

2) The prisoner has a mental disorder which was treated in prison.

3) The mental disorder was a partial or total cause, or an aggravating factor, in the commission of the crime for which the prisoner was sentenced.

4) The prisoner's mental disorder is not in remission or cannot be kept in remission.

After the parole period, if the illness still is not in remission, the involuntary treatment may be continued by court order on a one year to one year basis.

SB 1296 recognizes the compelling public interest in mandating treatment for mental disorders of prisoners who have committed violent crimes when a mental disorder was a cause or aggravating factor of the crime.

# # #

SUPPORTIVE AND BACKGROUND FIGURES

Public Protection Act, SB 1246

Violent Mentally Ill Offenders Act, SB 1296

Attempted-Murder Sentencing Act, SB 424

Repeat-Murderer Sentencing Act (being drafted

Office of Senator Robert Presley

Office of Senator Dan McCorquodale

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ASSEMBLY PUBLIC SAFETY COMMITTEE
REPUBLICAN ANALYSIS

SB 1296 (McCorquodale) -- SEVERELY MENTALLY DISORDERED OFFENDERS
Version: Conference Committee -- 9/10/85
Chair: Larry Stirling

Summary: This bill would: 1) authorize extended commitment of mentally ill prisoners during their parole in a Department of Mental Health (DMH) facility upon a finding by the Board of Prison Terms (BPT), utilizing the beyond a reasonable doubt standard, that the parolee is suffering from a severe mental disorder which contributed to the commission of a violent felony and that the disorder cannot be kept in remission without treatment; 2) authorize such extended commitment in renewable one year periods containing no limit on the number of recommitments possible; 3) allow a prisoner who disagrees with the finding of the BPT to file in the Superior Court for a jury trial on the issue; 4) provide that for both commitments and recommitments, the treatment shall be on an inpatient basis unless there is "reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis."; 5) provide notice provisions whereby the prisoner is made aware of appeal procedures; 6) be operative 7/1/86.
Fiscal effect: Undetermined.

Supported by Unknown because of amendments.
Opposed by Unknown because of amendments.
Governor's position: SUPPORT

Comments: The administration supports the Conference Committee Report. Vote: Majority.
Recommendation: Support

Senate Floor -- 5/9/85
(26-2)
Assembly Floor -- 9/5/85
() Vote Not Available
Consultant: Earl Cantos

IN CONFERENCE

**SENATE RULES COMMITTEE**

Office of
Senate Floor Analyses
1100 J Street, Suite 305
445-6614

| | |
|---|---|
| Bill No. | SB 1296 |
| Author: | McCorquodale (D), et al |
| Amended: | 8/30/85 |
| Vote Required: | Majority |

Committee Votes:

COMMITTEE: JUDICIARY
BILL NO.: SB 1296
DATE OF HEARING: 8-23-85

| SENATORS: | AYE | NO |
|---|---|---|
| Doolittle | ✓ | |
| Keene | | |
| Marks | | ✓ |
| Petris | | ✓ |
| Presley | ✓ | |
| Torres | ✓ | |
| Watson | ✓ | |
| Davis (VC) | ✓ | |
| Lockyer (Ch) | | |
| TOTAL: | 5 | 2 |

COMMITTEE: APPROPRIATIONS
BILL NO.: SB 1296
DATE OF HEARING: 9-4-85

| SENATORS: | AYE | NO |
|---|---|---|
| Ayala | ✓ | |
| Boatwright | ✓ | |
| Campbell | ✓ | |
| Deddeh | ✓ | |
| Dills | ✓ | |
| Foran | | |
| Maddy | ✓ | |
| Beverly (VC) | ✓ | |
| Alquist (Ch) | ✓ | |
| TOTAL: | 8 | 0 |

Senate Floor Vote: P. 1268 (5/9/85)

**Senate Bill 1296**—An act to amend Sections 2960, 3001, and 3003 of the Penal Code, relating to prisoners.

Bill read third time and presented by Senator McCorquodale.

**Roll Call**

The roll was called and the bill was passed by the following vote:

AYES (26)—Senators Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Bill Greene, Lockyer, Maddy, McCorquodale, Montoya, Morgan, Nielsen, Presley, Robbins, Roberti, Royce, Russell, Seymour, and Stiern.

NOES (2)—Senators Petris and Rosenthal.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote:

**SUBJECT:** Mentally disordered inmates -- treatment

**SOURCE:** Joint Committee for the Revision of the Penal Code

**DIGEST:** This bill, which becomes operative 7/1/86, would provide for the treatment of mentally disordered offenders while on parole, as specified.

Assembly Amendments

1. Primarily redefine the condition which parolees would e placed within the involuntary treatment program to include only those with "severe" mental disorders. Defines severe mental disorders.

2. Changes the prisons who have to certify the parolee has met criteria for treatment to the Board of Prison Terms.

3. Provides for further procedures concerning the evaluation of a parolees' eligibility.

4. Deletes the provision which provided the term for parole of previously mentally disordered inmates would be two years, absent good cause for extension.

5. Provides that the bill is to apply to persons incarcerated before, as well as after, the effective date of the bill.

**ANALYSIS:** Existing law permits the Director of Corrections, with the approval of the Department of Mental Health to transfer any mentally ill person to a

CONTINUED

state hospital for treatment. / In addition under existing law, a person judged to be mentally disordered and a danger to others may be civilly committed for renewable periods not exceeding 180 days.

This bill would permit the Board of Prison Terms to order that, as a condition of parole, a mentally disordered inmate accept treatment on an in- or outpatient basis until the mental disorder was put into remission, as specified.

The purpose of this bill is to permit confinement of specified mentally disordered inmates after the expiration of their sentences.

Existing law allows a 72-hour period of evaluation for persons who are allegedly a danger to others, a subsequent 14-day commitment if they are certified as dangerous to others, and a 180-day period of postcertification involuntary custody when the person is found to be mentally ill, demonstrably dangerous, and to have committed or threatened an assault on someone prior to or during custody. This procedure may be used to commit a prisoner civilly prior to their parole release.

According to the Senate Judiciary Committee analysis, the author contends the present civil commitment procedures are generally ineffective for mentally ill inmates. The reasons for this ineffectiveness are the following:

--The law requires proof of future dangerousness;

--This proof is regarded by both courts and psychiatrists as problematic to achieve;

--Courts have usually insisted on recent evidence to support a finding of future dangerousness--a standard difficult to meet with prisoners who live in a strongly restrained environment.

In addition, the author states that even if one six month's commitment is ordered, subsequent ones are "next to impossible."

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Current law permits the transfer to a state hospital of any mentally ill prisoner whom the Director of Mental Health agrees to accept.

Prior to July 1, 1982, this procedure was seldom used. At that time only 70 patients had been transferred to Atascadero State Hospital pursuant to its provisions.

However, during fiscal year 1982-83, 126 admissions occurred, and during the following fiscal year, that number grew to 206. Including the figures from this year, 399 patient-prisoners from CDC are now housed at Atascadero. These people may remain there until they no longer benefit from treatment, but in no case beyond the expiration of their sentences.

According to the Department of Mental Health, some of these patients have been transferred as a prelude to civil commitment proceedings. However, courts have proven reluctant to establish conservatorships upon expiration of a Penal Code sentence, even when such an approach is strongly recommended by hospital examiners.

CONTINUED

According to the committee analysis, this bill is aimed at the over 2000 prisoners now in the Department of Corrections who have a medical/psychiatric classification. According to the author's office, this bill "will provide a means to make sure the mental disorders of these persons are under control before their final release."

This bill, which would become operative on 7/1/86, would mandate that, as a condition of parole, prisoners who met specified criteria be required to be treated by the Department of Mental Health.

Prior to release on parole, the person in charge of treating the prisoner and a protecting psychiatrist or psychologist from the Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections would have to certify the prisoner met the criteria to the Board of Prison Terms.

If the prisoner did not meet this burden, the board would order him confined in the Department of Mental Health unless the department certified that he would not be a danger while on outpatient status.

If the prisoner recovered his severe mental health at any time during parole, the department would discontinue the treatment.

Prior to the end of parole, a state hospital or county mental health director or the Director of Corrections could petition the district attorney of the committing county to extend the parolee's involuntary treatment if the illness was not in remission.

At the superior court hearing on the issue, the parolee would have the right to appointed counsel and to a jury trial. The need for extension would have to be proven beyond a reasonable doubt, and if the trial is by jury, the jury is to be unanimous in its verdict.

Recommitments would be for successive one-year periods.

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**FISCAL EFFECT:** Appropriation: No Fiscal Committee: Yes Local: No

The following analysis by the Legislative Analyst is based on the 4/18/85 version of this bill:

Cost:

1. Unknown, potentially major (over $1 million), annual General Fund costs to Departments of Corrections and Mental Health for treatment of mentally-disordered parolees.

2. Unknown potential capital outlay costs for Department of Mental Health.

3. Unknown local costs for court hearings to the extent that district attorneys file petitions for recommitment of parolees.

Revenue: None.

CONTINUED

**SUPPORT:** (Verified 5/8/85) (Unable to reverify as of 9/9/85 version)

Attorney General
California Psychiatric Association
California Conference of Local Mental Health Directors
California Medical Association
California District Attorneys' Association
American Association of Retarded Persons
California Police Officers Association
Mayor Diane Feinstein of San Francisco
California Sheriffs' Association
California Correctional Peace Officers Association
Citizens for Law and Order
Citizens for Truth
Numerous individuals

**OPPOSITION:** (Verified 5/8/85)

Friends Committee on Legislation
ACLU
California Attorneys for Criminal Justice
California Public Defenders' Association
Department of Finance

**ARGUMENTS IN SUPPORT:** The Attorney General contends that this bill addresses a serious loophole in California's current determinate sentencing procedures which leave officials virtually helpless to avoid releasing prisoners who still pose a serious risk to society.

**ARGUMENTS IN OPPOSITION:** The ACLU declares that the main problem with the standard of SB 1296 is that it permits a commitment upon a prediction of future dangerousness. Such predictions are notoriously unreliable and have been viewed with a great suspicion by courts. Studies have shown that in at least 80% of the cases, psychiatrists are falsely predicting that a person will in fact engage in assaultive or dangerous conduct. It is of questionable constitutionality to confine persons on the basis of such unreliable information.

VW:jd 9/9/85 Senate Floor Analyses

State of California—Health and Welfare Agency

Department of Mental Health

**BILL ANALYSIS**

MH 35 (7/91)

| Department | Author | Bill Number |
|---|---|---|
| Mental Health | McCorquodale | SB 1296 |
| **Sponsored By** Joint Committee for the Revision of the Penal Code | **Related Bills** SB 1054 | **Date Last Amended** 6/25/85 |

**Summary**

Although there is no specific reference to "mentally disordered violent offender" commitment, the bill falls into this general category.

LEGISLATIVE BACKGROUND

Senator McCorquodale co-chaired the Joint Legislative Committee on Mental Disorders and Genetic Diseases with Assemblyman Bronzan. Ned Cohen, Consultant to the Joint Committee for Revision of the Penal Code, prepared the bill for Senator McCorquodale.

SB 1054 (Lockyer) would establish a mentally disordered violent offender commitment, but this bill limits the commitment to those inmates who are a substantial danger of physical harm to others due to a mental disorder. SB 1054 is sponsored by the Governor.

PROGRAM BACKGROUND

There are currently about 275 mentally ill prison inmates served by the state hospitals under Penal Code Section 2684, and about 30 parolees treated under Penal Code Section 2960. This latter statute authorizes the treatment of a mentally ill parolee under the provisions of the LPS Act, but at no cost to the county of commitment. An Interagency Agreement between the Department of Corrections and the Department of Mental Health provides that there are to be 300 state hospital beds for these mentally ill inmates and parolees. This patient population is now reaching capacity.

SPECIFIC FINDINGS

1. This amendment provides that the Department of Corrections shall evaluate each prisoner during the first year of incarceration for severe mental disorders. Those with severe mental disorders shall be provided with an appropriate level of mental health treatment while in prison and after return to the community.

   This has the potential for a sizable impact on the need for treatment beds, staff and support positions. The budget provides for 300 state hospital beds for treatment of prison inmates and parolees. Additional resources will need to be developed in either the existing prisons or else in the new correctional facilities if this requirement is to be met. This could potentially also affect the future use of state hospital resources.

| Position | | | | Governor's Office Use | |
|---|---|---|---|---|---|
| SUPPORT WITH SUGGESTED AMENDMENTS | | | | Position Noted | |
| | | | | Position Approved | ✓ |
| Department Director | Date | Agency Secretary | Date | Position Disapproved | |
| [signature] | 7/25 | Original Signed by Jim Morgan | 7-25-85 | By RW | Date 8/6 |

SPECIFIC FINDINGS (Continued)

2. The term "severe mental disorder" has been defined in the bill. It now clarifies that "severe mental disorder" does not include personality disorders manifested only by repeated criminal behavior, epilepsy, mental retardation, or abuse of intoxicating substances.

3. The bill previously required that the person had received treatment for 90 days or more. This amendment provides that the treatment must have been during the last year of the person's term.

4. The procedure by which inmates are recommended to the Board of Prison Terms for Treatment is modified. A clinical representative of the Department of Corrections (CDC) and DMH evaluate the inmate to determine if the person meets the criteria for commitment. If the CDC representative determines that the commitment is appropriate, but the DMH representative disagrees, then the Board of Prison Terms has an evaluation performed by two independent clinicians from a panel, the members of which are jointly selected by DMH and CDC. If both panelists agree that the person meets the admission criteria, then the Board of Prison Terms may commit the person to the DMH.

5. The panel of independent clinicians is to consist of at least 20 professionals. The list is to be presented to the Board of Prison Terms on July 1 of each year is only binding until June 30.

6. Once a person is committed by the Board of Prison Terms to a state hospital the person may be released when there is reasonable cause to believe that the parolee can be safely placed in the community program. Prior to placing a parolee in an outpatient program, DMH shall consult with the program concerning an appropriate treatment plan. The bill specifies that these patients may be placed in the Conditional Release Program.

7. The outpatient program director may place the parolee in an inpatient facility if the parolee is no longer safe for outpatient treatment. The parolee may request a hearing by the Board of Prison Terms which may return the person to prison. This provision does not seem to allow the Board of Prison

SPECIFIC FINDINGS (Continued)

Terms to commit the person for treatment in a state hospital. Return to prison may not be clinically indicated for those who suffer an exacerbation of the mental disorder.

8. The earlier version of the bill provides for a court hearing to continue the commitment of the person to the mental health system when the parole is over. The county public defender, and not the State Public Defender, is to provide counsel for those who are indigent.

9. Those committed to state hospital by the court may be placed in the Conditional Release Program. The standard for revocation of outpatient status is that the person cannot be safely and effectively treated on an outpatient basis. The standard for revocation of a parolee's outpatient treatment is that he or she cannot be safely or effectively treated as an outpatient. The conjunction "or" should also be used in the judicial revocation. This seemingly minor detail would greatly ease the ability to return the person to a hospital when necessary.

10. The earlier version of the bill gives the Board of Prison Terms authority to extend the length of the parole "for good cause." This latest amendment adds that this provision only applies to persons whose crime was committed after this bill would be enacted. This appears to be in light of ex post facto which prohibits a retroactive increase in criminal penalties.

FISCAL IMPACT

The following fiscal impact was developed by the Department of Mental Health and staff of the Department of Corrections and the Department of Finance. Legislative Liaison for the Department of Corrections is reviewing these projections.

| Year | Inpatient Population | Outpatient Population | *Cumulative Cost |
|---|---|---|---|
| 1 | 570 | 570 | 37,688 |
| 2 | 1,045 | 1,235 | 202,079 |
| 3 | 1,425 | 1,995 | 279,365 |
| 4 | 1,805 | 2,755 | 356,241 |
| 5 | 1,995 | 3,135 | 394,863 |
| 6 | 2,185 | 3,420 | 432,297 |
| 7 | 2,375 | 3,610 | 468,606 |
| 8 | 2,565 | 3,800 | 504,841 |
| 9 | 2,565 | 3,990 | 507,165 |
| 10 | 2,565 | 4,180 | 509,489 |

See attached Chart I

*Please note that the Cumulative Costs are in thousands.

RECOMMENDATION

SUPPORT WITH SUGGESTED AMENDMENTS. The bill would provide needed treatment to mentally ill prison inmates before their return to the community. It would also provide for an increased level of supervision and treatment of these patients upon their return, with a mechanism for reinstitutionalization if needed.

The Department recommends that the bill be amended to provide authority to move current and future inpatients as needed to accommodate this new patient population. (Please refer to the attached amendment.)

SB 1296: RATIONALE OF FISCAL ANALYSIS (Assumptions)

1. Approximately 19,000 prisoners were released from CDC in 1984.

2. Six percent, or 1,140, will be referred to DMH under provisions of SB 1296. (This is the number of parolees referred by the Board of Prison Terms for treatment.) Only 40 percent, or 456, of these parolees have major mental disorders.

3. Fifty percent of those referred will need inpatient treatment.

4. Fifty percent, or 570, of those referred will need outpatient treatment for four years.

5. Of those needing inpatient treatment:

   (a) One-third will be long-term patients with an average length of stay of eight years.

   (b) One-third will have an average length of stay of four years.

   (c) One-sixth will have an average length of stay of two years.

   (d) One-sixth will have an average length of stay of one year.

   (e) At the end of the patient's inpatient treatment, all patients will require an additional average length of treatment on an outpatient basis for four years.

6. This bill refers to the mental health treatment needs of inmates being met while they are serving their determinate terms. Currently 300 state hospital beds are available for PC 2684 patients; i.e., inmates transferred for treatment. This resource is assumed to be adequate for persons serving their prison term.

SB 1296

| | YEAR | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | DMH - INPATIENT COSTS | | | | | | | | | | |
| | Population | 570 | 1,045 | 1,425 | 1,805 | 1,995 | 2,185 | 2,375 | 2,565 | 2,565 | 2,565 |
| 1/ | Services Costs (in 1,000) | 34,200 | 62,700 | 85,500 | 108,300 | 119,700 | 131,100 | 142,500 | 153,900 | 153,900 | 153,900 |
| 2/ | Personnel Years | 1,015 | 1,860 | 2,537 | 3,213 | 3,551 | 3,889 | 4,228 | 4,566 | 4,566 | 4,566 |
| 3/ | Capital Outlay - Incremental | - | 130,625 | 47,500 | 47,500 | 23,750 | 23,750 | 23,750 | 23,750 | -- | -- |
| | - Cummulative | - | 130,625 | 178,125 | 225,625 | 249,375 | 273,125 | 296,875 | 320,625 | 320,625 | 320,625 |
| | Total Cost with Capital Outlay - | | | | | | | | | | |
| | - Incremental | 34,200 | 193,325 | 133,000 | 155,800 | 143,450 | 154,850 | 166,250 | 177,650 | 153,900 | 153,900 |
| | - Cummulative | 34,200 | 193,325 | 263,625 | 333,925 | 369,075 | 404,225 | 439,375 | 474,525 | 474,525 | 474,525 |
| | DMH OUTPATIENT COSTS | | | | | | | | | | |
| | Population | 570 | 1,235 | 1,995 | 2,755 | 3,135 | 3,420 | 3,610 | 3,800 | 3,990 | 4,180 |
| 4/ | Services Costs | 6,840 | 14,820 | 23,940 | 33,060 | 37,620 | 41,040 | 43,320 | 45,600 | 47,880 | 50,160 |
| | DMH Support at 10% | 684 | 1,482 | 2,394 | 3,306 | 3,762 | 4,104 | 4,332 | 4,560 | 4,788 | 5,016 |
| | Total Outpatient | 7,524 | 16,302 | 26,334 | 36,366 | 41,382 | 45,144 | 47,652 | 50,160 | 52,668 | 55,176 |
| | Total Costs with Capital Outlay - | | | | | | | | | | |
| | - Incremental | 41,724 | 209,627 | 159,334 | 192,166 | 184,832 | 199,994 | 213,902 | 227,810 | 206,568 | 209,076 |
| | - Cummulative | 41,724 | 209,627 | 289,959 | 370,291 | 410,457 | 449,369 | 487,027 | 524,685 | 527,193 | 529,701 |
| 5/ | DMH Outpatient Revocations | 3,190 | 6,930 | 11,165 | 15,455 | 17,600 | 19,195 | 20,240 | 21,340 | 22,385 | 23,430 |
| 6/ | CDC Reoffense Savings | ( 5,784) | ( 11,568) | ( 17,358) | ( 23,136) | ( 26,028) | ( 28,438) | ( 30,315) | ( 32,293) | ( 33,257) | ( 34,221) |
| 7/ | CDC Revocation Savings | ( 1,592) | ( 3,185) | ( 4,777) | ( 6,369) | ( 7,166) | ( 7,829) | ( 8,346) | ( 8,891) | ( 9,156) | ( 9,421) |
| 8/ | CDC Certifications | 150 | 275 | 376 | -- | -- | -- | -- | -- | -- | -- |
| | Total Costs with Capital Outlay - | | | | | | | | | | |
| | - Incremental | 37,688 | 202,079 | 148,740 | 178,116 | 169,238 | 182,922 | 195,481 | 207,966 | 186,540 | 188,864 |
| | - Cummulative | 37,688 | 202,079 | 279,365 | 356,241 | 394,863 | 432,297 | 468,606 | 504,841 | 507,165 | 509,489 |

SB 1296 Footnotes

1/ Based on $60,000 per patient per year.

2/ Staffing formula of 1.78 staff per patient.

3/ Capital outlay costs will not begin until the second year because of planning and development needed. DMH does not have any hospital bed space in a secured facility for this population. Information provided by the Division of State Hospitals indicates that estimated capital outlay cost to build is approximately $125,000 per bed. The $125,000/bed capital outlay estimate includes only the basic facility. It does not include other resources needed to make an operating hospital. Planning and development costs and site acquisition costs are not included in the estimate. It is estimated that 900 beds per hospital would be maximum for this population.

4/ Based on $12,000 per year per patient.

5/ The DMH, AB 1229 Program, has an outpatient revocation rate of 10.2%. Average length of stay on revocations is 11 months or $55,000 per revoke.

6/ CDC reoffense rate is 14% with an average length of stay of 30.2 months at $1,200 per month.

7/ CDC revocation rate is 29.1% with an average length of stay of four months at $1,200 per month.

8/ Certification data is not available beyond three years.

CONFERENCE COMPLETED

**SENATE RULES COMMITTEE**

Office of
Senate Floor Analyses
1100 J Street, Suite 305
445-6614

| | |
|---|---|
| Bill No. | SB 1296 |
| Author: | McCorquodale (D), et al |
| Amended: | Conference Committee Report No. 1, 9/10/85 |
| Vote Required: | Majority |

Committee Votes:

COMMITTEE: JUDICIARY
BILL NO.: SB 1296
DATE OF HEARING: 4-23-85

| SENATORS: | AYE | NO |
|---|---|---|
| Doolittle | ✓ | |
| Keene | | |
| Marks | | ✓ |
| Petris | | ✓ |
| Presley | ✓ | |
| Torres | ✓ | |
| Watson | ✓ | |
| Davis (VC) | ✓ | |
| Lockyer (Ch) | | |
| TOTAL: | 5 | 2 |

COMMITTEE: APPROPRIATIONS
BILL NO.: SB 1296
DATE OF HEARING: 5-6-85

| SENATORS: | AYE | NO |
|---|---|---|
| Ayala | ✓ | |
| Boatwright | ✓ | |
| Campbell | ✓ | |
| Deddeh | ✓ | |
| Dills | ✓ | |
| Foran | | |
| Maddy | ✓ | |
| Beverly (VC) | ✓ | |
| Alquist (Ch) | ✓ | |
| TOTAL: | 8 | 0 |

Senate Floor Vote: P. 1268 (5/9/85)

**Senate Bill 1296**—An act to amend Sections 2960, 3001, and 3003 of the Penal Code, relating to prisoners.

Bill read third time and presented by Senator McCorquodale.

**Roll Call**

The roll was called and the bill was passed by the following vote:

AYES (26)—Senators Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Bill Greene, Lockyer, Maddy, McCorquodale, Montoya, Morgan, Nielsen, Presley, Robbins, Roberti, Royce, Russell, Seymour, and Stiern.

NOES (2)—Senators Petris and Rosenthal.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 59-12, P. 4300, 9/5/85

**SUBJECT:** Mentally disordered inmates -- treatment

**SOURCE:** Author

**DIGEST:** This bill, which becomes operative 7/1/86, would provide for the treatment of mentally disordered offenders while on parole, as specified.

Assembly Amendments

1. Primarily redefine the condition which parolees would be placed within the involuntary treatment program to include only those with "severe" mental disorders. The amendments define severe mental disorders.

2. Requires the Board of Prison Terms to certify that the parolee has met criteria for treatment, instead of the prison.

3. Provide for further procedures concerning the evaluation of a parolees' eligibility.

4. Delete the provision which provided that the term for parole of previously mentally disordered inmates would be two years, absent good cause for extension.

5. Provide that the bill is to apply to persons incarcerated before, as well as after, the effective date of the bill.

The Conference Committee Report makes clarifying changes. The report also requires the county public defender to represent indigent criminal offenders and

CONTINUED

the district attorney to represent the people, thereby creating a state-mandated local program.

The report provides reimbursement for costs mandated by this bill not exceeding $500,000.

This language is identical to that added to SB 1054 on 9/10/85.

**ANALYSIS:** Existing law permits the Director of Corrections, with the approval of the Department of Mental Health to transfer any mentally ill person to a state hospital for treatment. In addition under existing law, a person judged to be mentally disordered and a danger to others may be civilly committed for renewable periods not exceeding 180 days.

This bill would permit the Board of Prison Terms to order that, as a condition of parole, a mentally disordered inmate accept treatment on an in- or outpatient basis until the mental disorder was put into remission, as specified.

The purpose of this bill is to permit confinement of specified mentally disordered inmates after the expiration of their sentences.

Existing law allows a 72-hour period of evaluation for persons who are allegedly a danger to others, a subsequent 14-day commitment if they are certified as dangerous to others, and a 180-day period of postcertification involuntary custody when the person is found to be mentally ill, demonstrably dangerous, and to have committed or threatened an assault on someone prior to or during custody. This procedure may be used to commit a prisoner civilly prior to their parole release.

According to the Senate Judiciary Committee analysis, the author contends the present civil commitment procedures are generally ineffective for mentally ill inmates. The reasons for this ineffectiveness are the following:

--The law requires proof of future dangerousness;

--This proof is regarded by both courts and psychiatrists as problematic to achieve;

--Courts have usually insisted on recent evidence to support a finding of future dangerousness--a standard difficult to meet with prisoners who live in a strongly restrained environment.

In addition, the author states that even if one six month's commitment is ordered, subsequent ones are "next to impossible."

Current law permits the transfer to a state hospital of any mentally ill prisoner whom the Director of Mental Health agrees to accept.

Prior to July 1, 1982, this procedure was seldom used. At that time only 70 patients had been transferred to Atascadero State Hospital pursuant to its provisions.

However, during fiscal year 1982-83, 126 admissions occurred, and during the following fiscal year, that number grew to 206. Including the figures from this

CONTINUED

year, 399 patient-prisoners from CDC are now housed at Atascadero. These people may remain there until they no longer benefit from treatment, but in no case beyond the expiration of their sentences.

According to the Department of Mental Health, some of these patients have been transferred as a prelude to civil commitment proceedings. However, courts have proven reluctant to establish conservatorships upon expiration of a Penal Code sentence, even when such an approach is strongly recommended by hospital examiners.

According to the committee analysis, this bill is aimed at the over 2000 prisoners now in the Department of Corrections who have a medical/psychiatric classification. According to the author's office, this bill "will provide a means to make sure the mental disorders of these persons are under control before their final release."

This bill, which would become operative on 7/1/86, would mandate that, as a condition of parole, prisoners who met specified criteria be required to be treated by the Department of Mental Health.

Prior to release on parole, the person in charge of treating the prisoner and a protecting psychiatrist or psychologist from the Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections would have to certify the prisoner met the criteria to the Board of Prison Terms.

If the prisoner did not meet this burden, the board would order him confined in the Department of Mental Health unless the department certified that he would not be a danger while on outpatient status.

If the prisoner recovered his severe mental health at any time during parole, the department would discontinue the treatment.

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Prior to the end of parole, a state hospital or county mental health director or the Director of Corrections could petition the district attorney of the committing county to extend the parolee's involuntary treatment if the illness was not in remission.

At the superior court hearing on the issue, the parolee would have the right to appointed counsel and to a jury trial. The need for extension would have to be proven beyond a reasonable doubt, and if the trial is by jury, the jury is to be unanimous in its verdict.

Recommitments would be for successive one-year periods.

**FISCAL EFFECT:** Appropriation: No Fiscal Committee: Yes Local: Yes

The following analysis by the Legislative Analyst is based on the 4/18/85 version of this bill:

Cost: 1. Unknown, potentially major (over $1 million), annual General Fund costs to Departments of Corrections and Mental Health for treatment of mentally-disordered parolees.

CONTINUED

2. Unknown potential capital outlay costs for Department of Mental Health.

3. Unknown local costs for court hearings to the extent that district attorneys file petitions for recommitment of parolees.

Revenue: None.

**SUPPORT:** (Verified 9/12/85)

Attorney General
California Psychiatric Association
California Conference of Local Mental Health Directors
California Medical Association
California District Attorneys' Association
American Association of Retarded Persons
California Police Officers Association
Mayor Diane Feinstein of San Francisco
California Sheriffs' Association
California Correctional Peace Officers Association
Citizens for Law and Order
Citizens for Truth
Numerous individuals

**OPPOSITION:** (Verified 9/12/85)

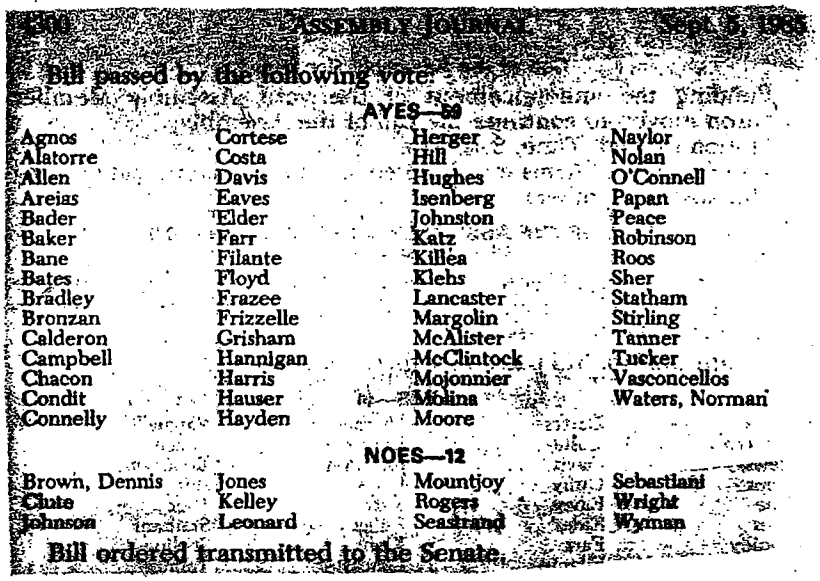
Friends Committee on Legislation
ACLU

**ARGUMENTS IN SUPPORT:** The Attorney General contends that this bill addresses a serious loophole in California's current determinate sentencing procedures which leave officials virtually helpless to avoid releasing prisoners who still pose a serious risk to society.

**ARGUMENTS IN OPPOSITION:** The ACLU declares that the main problem with the standard of SB 1296 is that it permits a commitment upon a prediction of future dangerousness. Such predictions are notoriously unreliable and have been viewed with a great suspicion by courts. Studies have shown that in at least 80% of the cases, psychiatrists are falsely predicting that a person will in fact engage in assaultive or dangerous conduct. It is of questionable constitutionality to confine persons on the basis of such unreliable information.

CONTINUED

**ASSEMBLY FLOOR VOTE:**



6300 ASSEMBLY JOURNAL Sept. 5, 1985

Bill passed by the following vote:

AYES—59

| | | | |
|---|---|---|---|
| Agnos | Cortese | Herger | Naylor |
| Alatorre | Costa | Hill | Nolan |
| Allen | Davis | Hughes | O'Connell |
| Areias | Eaves | Isenberg | Papan |
| Bader | Elder | Johnston | Peace |
| Baker | Farr | Katz | Robinson |
| Bane | Filante | Killea | Roos |
| Bates | Floyd | Klehs | Sher |
| Bradley | Frazee | Lancaster | Statham |
| Bronzan | Frizzelle | Margolin | Stirling |
| Calderon | Grisham | McAlister | Tanner |
| Campbell | Hannigan | McClintock | Tucker |
| Chacon | Harris | Mojonnier | Vasconcellos |
| Condit | Hauser | Molina | Waters, Norman |
| Connelly | Hayden | Moore | |

NOES—12

| | | | |
|---|---|---|---|
| Brown, Dennis | Jones | Mountjoy | Sebastiani |
| Chute | Kelley | Rogers | Wright |
| Johnson | Leonard | Seastrand | Wyman |

Bill ordered transmitted to the Senate.

VW:jd 9/12/85 Senate Floor Analyses

THIRD READING

SB 1296

McCorquodale (D), et al

5/8/85

Majority

**SUBJECT:** Mentally disordered inmates -- treatment

**SOURCE:** Joint Committee for the Revision of the Penal Code

**DIGEST:** This bill, which becomes operative 7/1/86, would provide for the treatment of mentally disordered offenders while on parole, as specified.

**ANALYSIS:** Existing law permits the Director of Corrections, with the approval of the Department of Mental Health to transfer any mentally ill person to a state hospital for treatment. In addition under existing law, a person judged to be mentally disordered and a danger to others may be civilly committed for renewable periods not exceeding 180 days.

This bill would permit the Board of Prison Terms to order that, as a condition of parole, a mentally disordered inmate accept treatment on an in- or outpatient basis until the mental disorder was put into remission, as specified.

The purpose of this bill is to permit confinement of specified mentally disordered inmates after the expiration of their sentences.

Existing law allows a 72-hour period of evaluation for persons who are allegedly a danger to others, a subsequent 14-day commitment if they are certified as dangerous to others, and a 180-day period of postcertification involuntary custody when the person is found to be mentally ill, demonstrably dangerous, and to have committed or threatened an assault on someone prior to or during custody. This procedure may be used to commit a prisoner civilly prior to their parole release.

CONTINUED

According to the Senate Judiciary Committee analysis, the author contends the present civil commitment procedures are generally ineffective for mentally ill inmates. The reasons for this ineffectiveness are the following:

--The law requires proof of future dangerousness;

--This proof is regarded by both courts and psychiatrists as problematic to achieve;

--Courts have usually insisted on recent evidence to support a finding of future dangerousness--a standard difficult to meet with prisoners who live in a strongly restrained environment.

In addition, the author states that even if one six month's commitment is ordered, subsequent ones are "next to impossible."

Current law permits the transfer to a state hospital of any mentally ill prisoner whom the Director of Mental Health agrees to accept.

Prior to July 1, 1982, this procedure was seldom used. At that time only 70 patients had been transferred to Atascadero State Hospital pursuant to its provisions.

However, during fiscal year 1982-83, 126 admissions occurred, and during the following fiscal year, that number grew to 206. Including the figures from this year, 399 patient-prisoners from CDC are now housed at Atascadero. These people may remain there until they no longer benefit from treatment, but in no case beyond the expiration of their sentences.

According to the Department of Mental Health, some of these patients have been transferred as a prelude to civil commitment proceedings. However, courts have proven reluctant to establish conservatorships upon expiration of a Penal Code sentence, even when such an approach is strongly recommended by hospital examiners.

According to the committee analysis, this bill is aimed at the over 2000 prisoners now in the Department of Corrections who have a medical/psychiatric classification. According to the author's office, this bill "will provide a means to make sure the mental disorders of these persons are under control before their final release."

This bill, which would become operative on 7/1/86, would mandate that, as a condition of parole, prisoners who met specified criteria be required to be treated by the Department of Mental Health.

The chief medical officer of the Department of Corrections, its chief psychiatrist, and the person in charge of treating the prisoner would have to certify the prisoner met the criteria to the Board of Prison Terms. The prisoner could request a hearing before the board in order to establish that the certification was incorrect. At this hearing the prisoner would have the burden of proof by a preponderance of the evidence.

If the prisoner did not meet this burden, the board would order him confined in the Department of Mental Health unless the department certified that he would not be a danger while on outpatient status.

CONTINUED

If the prisoner recovered his mental health at any time during parole, the department would discontinue the treatment.

Prior to the end of parole, a state hospital or county mental health director or the Director of Corrections could petition the district attorney of the committing county to extend the parolee's involuntary treatment if the illness was not in remission.

At the superior court hearing on the issue, the parolee would have the right to appointed counsel and to a jury trial. The need for extension would have to be proven by a preponderance of the evidence.

Recommitments would be for successive one-year periods.

Under existing law the term of parole for determinately sentenced inmates is not exceeding three years, with release following one year absent good cause for extension. Under this bill, the term for parole of previously mentally disordered inmates would be two years, absent good cause for extension.

**FISCAL EFFECT:** Appropriation: No Fiscal Committee: Yes Local: No

The following analysis by the Legislative Analyst is based on the 4/18/85 version of this bill:

Cost:

1. Unknown, potentially major (over $1 million), annual General Fund costs to Departments of Corrections and Mental Health for treatment of mentally-disordered parolees.

2. Unknown potential capital outlay costs for Department of Mental Health.

3. Unknown local costs for court hearings to the extent that district attorneys file petitions for recommitment of parolees.

Revenue: None.

**SUPPORT:** (Verified 5/8/85)

Attorney General
California Psychiatric Association
California Conference of Local Mental Health Directors
California Medical Association
California District Attorneys' Association
American Association of Retarded Persons
California Police Officers Association
Mayor Diane Feinstein of San Francisco
California Sheriffs' Association
California Correctional Peace Officers Association
Citizens for Law and Order
Citizens for Truth
Numerous individuals

CONTINUED

**OPPOSITION:** (Verified 5/8/85)

Friends Committee on Legislation
ACLU
California Attorneys for Criminal Justice
California Public Defenders' Association

**ARGUMENTS IN SUPPORT:** The Attorney General contends that this bill addresses a serious loophole in California's current determinate sentencing procedures which leave officials virtually helpless to avoid releasing prisoners who still pose a serious risk to society.

**ARGUMENTS IN OPPOSITION:** The ACLU declares that the main problem with the standard of SB 1296 is that it permits a commitment upon a prediction of future dangerousness. Such predictions are notoriously unreliable and have been viewed with a great suspicion by courts. Studies have shown that in at least 80% of the cases, psychiatrists are falsely predicting that a person will in fact engage in assaultive or dangerous conduct. It is of questionable constitutionality to confine persons on the basis of such unreliable information.

VW:jd 5/8/85 Senate Floor Analyses

State of California

# ENROLLED BILL REPORT

| AGENCY | BILL NUMBER |
|---|---|
| YOUTH AND ADULT CORRECTIONAL AGENCY | SB 1296 |
| **DEPARTMENT, BOARD OR COMMISSION** | **AUTHOR** |
| CORRECTIONS | McCORQUODALE |

This bill would establish a new program for the treatment and confinement of parolees who have a severe mental disorder which is not in remission or cannot be kept in remission without treatment. Inpatient or outpatient treatment would be under the auspicies of the Department of Mental Health. The bill becomes operative on July 1, 1986.

IMPACT ASSESSMENT

The Governor sponsored SB 1054 (Lockyer) to prevent the release of prisoners who still pose a threat to society because of mental disorders. This bill had the same goal and in its final form is very similar to SB 1054. SB 1054 as passed contains the recommitment provisions found in this bill. Both bills should be signed.

Under the Determinate Sentencing Act, terms of imprisonment are finite. Persons will be released at the end of the finite terms as reduced for good time behavior and work/training participation. There is no provision for incarcerating persons beyond their determinate sentence.

Current law (Penal Code Section 2684) permits the transfer of prisoners to Department of Mental Health for treatment. Penal Code Section 2960 permits the Director of Corrections to place in a state hospital a prisoner or parolee who by reason of mental disorder is a danger to self or others, or gravely disabled, under the definition of the Lanterman-Petris-Short Act.

Some prisoners are recommitted to Department of Mental Health as gravely disabled. However, most prisoners with mental disorders fall under the danger to other category.

The post-certification provisions of the Lanterman-Petris-Short (LPS) law apply to persons released from prison if a person is mentally disordered and a danger to others, he may be committed to community or state hospital for up to 180 days. The narrow definition of dangerousness, the rigorous procedural protections, and the limited duration of commitment of this law, even with recent amendments, do not as a practical matter adequately provide for extended incarceration and treatment for persons to be released from prison who represent a danger to others due to mental disorder. The extremely limited application of this law is illustrated by the fact that relative to non-prisoners, there are only 35 persons held under this provision at state mental hospitals. Because of the narrowness the Department of Mental Health does not try to invoke the law, local prosecutors may decline to undertake the case, or at trial there is no finding to sustain confinement.

RECOMMENDATION:

SIGN THE BILL

| DEPARTMENT HEAD | DATE | AGENCY HEAD | DATE |
|---|---|---|---|
| [signature] | 9/25/85 | [signature] | 9/26/85 |

CDC 853 B (4/85)

(1) has a severe mental disorder which is not in remission or cannot be kept in remission,

(2) the mental disorder caused, was one of the causes, or was an aggravating factor in the prisoner's criminal behavior,

(3) the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's release on parole,

(4) the crime was one involving force or violence or infliction of serious bodily injury.

If the professionals do not agree that the prisoner meets the criteria, the Board of Prison Terms shall order an evaluation by independent professionals. If the independent professionals agree with chief psychiatrist's certification the prisoner shall be subject to the provisions of the bill.

The treatment shall be inpatient unless DMH certifies to the Board of Prison Terms (BPT) there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis. The parolee may be treated by the state or by a locally operated outpatient program.

If the parolee on an outpatient program can no longer be treated safely or effectively, the director of an outpatient program can place the parolee in a locked mental health facility. The Board of Prison Terms shall conduct a hearing within 15 days as to whether the parolee can safely and effectively be treated in the program.

Prior to seking revocation of parole of a parolee receiving treatment under this program, the parole officer shall consult with the director of the parolee's outpatient program.

If a parolee is not placed on outpatient treatment within 60 days after being initially received by the Department of Mental Health or after parole is continued under Penal Code Section 3001, the parolee may request a BPT hearing for a determination as to whether inpatient or outpatient treatment is appropriate. If requested, two independent professionals are to evaluate the question.

The parolee is entitled to a BPT hearing to determine whether the parolee fits the criteria. The burden of proof is upon the Department of Corrections to prove that the prisoner fits the definition. The board shall appoint two independent professionals if requested by the prisoner.

The prisoner has the right to court or jury determination, to file a petition to challenge the determination of BPT. Proof is beyond a reasonable doubt and verdict must be unanimous

180 days before the termination of parole, or release of a prisoner if they refuse to agree to treatment as a condition of parole, the medical director of the state mental health hospital, or the Director of Corrections shall, if the parolee or prisoner fits the criteria of the bill, submit a written evaluation. The district attorney may file a petition in the superior court for the continued involuntary treatment. The prisoner or parolee has a right to a jury trial, proof beyond a reasonable doubt, and an unanimous jury verdict.

If the court or jury finds the person to still meet the criteria of the bill, the court shall order the patient committed to a mental health facility. The commitment is for one year and is renewable.

These provisions are also contained in SB 1054 (Lockyer).

If the court finds that the person can be safely and effectively treated as an outpatient, the court shall order the person released on outpatient status under the commitment.

The bill in its final form will increase the ability of the Department of Corrections to prevent the release of prisoners who because of mental disorder present a danger to the public. While the bill does not cover all such prisoners, it is significantly more comprehensive than the current LPS procedures.

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The determination of the fiscal impact of this bill depends upon the number of persons affected by the bill, and their length of stay. It has been estimated that approximately 150 persons each year will fit the criteria of this bill. However, the actual number committed will depend upon a court or jury finding.

Most of the fiscal impact of this bill will be on the Department of Mental Health which will receive parolees under this bill. To the extent that the parolees are treated at DMH, there will be savings to the Department of Corrections in terms of reduced reoffense commitments and reduced return to custody because of violation of parole. Much of the psychiatric evaluation is already being performed in connection with Penal Code Section 2684 transfers to DMH for treatment and evaluation and a condition of parole.

The Department of Corrections' Parole Outpatient Clinic will continue to handle the bulk of the inmates who do not meet the criteria of the bill and do not require institutionalization. This bill will assist the Parole Outpatient Clinic by facilitating institutionalization of parolees in need of intensive treatment and confinement.

ARGUMENTS PRO AND CON

PRO: The bill is a significant improvement in the level of public protection from prisoners and parolees with mental disorders who under current law must be released into the community.

CON: None.

RECOMMENDATION: SIGN THE BILL

State of California—Health and Welfare Agency

Department of Mental Health

**ENROLLED BILL REPORT**
MH 34 (7/81)

| Agency | Bill Number |
|---|---|
| Health and Welfare | SB 1296 |
| **Department** | **Author** |
| Mental Health | McCorquodale |

**SUBJECT**

This bill establishes a new commitment for mentally ill prison inmates who reach the end of a determinate prison term.

HISTORY, SPONSORSHIP AND RELATED BILLS

SB 1296 is sponsored by the Joint Committee for Revision of the Penal Code. SB 1054 (Lockyer) is sponsored by the Administration and also addresses a mental health commitment for mentally ill prison inmates. When SB 1054 was introduced it was in the same form as AB 29 (Knox) which was enrolled in 1979 but vetoed by Governor Brown. AB 29 was sponsored by then Attorney General Deukmejian. SB 1054 was amended substantially and now provides the mechanism for extension of commitment of Mentally Disordered Offenders, as set forth in SB 1296.

VOTE

| | Committee | Floor |
|---|---|---|
| Senate | 5 - 2 | 26 - 2 |
| Assembly | 4 - 2 | 59 - 12 |

SPECIFIC FINDINGS

1. Treatment of Prison Inmates

The bill provides that the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's term, and those inmates identified should be provided with an appropriate level of mental health treatment while in prison and when returned to the community. This intent statement does not constitute a mandate for either evaluation or service delivery.

2. Commitment Criteria

As a condition of parole the prisoner meeting the following criteria shall be treated by Department of Mental Health:

a. The person must have a severe mental disorder which is not in remission or cannot be kept in remission. "Severe mental disorder" excludes personality disorder, adjustment reaction, epilepsy, developmental disability or addiction/abuse of intoxicants. "Remission" means that the overt signs and symptoms of the mental disorder are controlled by psychotropic medication or psychosocial support. "Cannot be kept in remission" means the prisoner, during the last year of incarceration, has done one of the following: (1) been physically violent, except in self-defense, (2) made a serious threat of substantial physical harm upon another person, (3) intentionally caused property damage or (4) refused to voluntarily follow the treatment plan.

b. Severe mental disorder caused or aggravated the commission of the crime.

Recommendation: SIGN

| Department Director | Date | Agency Secretary | Date |
|---|---|---|---|
| [signature] | 4/26/85 | [signature] | 4-27-85 |

SPECIFIC FINDINGS (Continued)

c. The prisoner has been in treatment for 90 days or more during the last year of incarceration.

d. Prisoner used force or violence in the commission of the crime.

3. Evaluation

The Board of Prison Terms may commit the person to the Department of Mental Health system if either of the following occur:

a. CDC and DMH representatives agree that the person meets the commitment criteria or, if they disagree;

b. the Board of Prison Terms may select two members of a panel composed of psychiatrists and psychologists who must agree the person meets the criteria. The overall panel is selected by CDC and DMH, and the panelists are not to be state employees.

4. Commitment by Board of Prison Terms

If the person meets the commitment criteria as determined through the evaluation process, then the Board of Prison Terms may commit the person to the mental health system.

5. Treatment - Inpatient and Outpatient

The treatment is to be inpatient unless DMH certifies to the Board of Prison Terms that the parolee may be safely and effectively treated on an outpatient basis. DMH must consult with the outpatient program concerning the appropriate treatment plan.

6. Outpatient Revocation

The outpatient program director may place the parolee in a secure mental health facility if the parolee can no longer be safely and effectively treated in the outpatient program. The revocation lasts until the parolee may again be safely treated on an outpatient basis. Within 15 days of the revocation, DMH shall conduct a hearing to review the revocation.

7. Parole Revocation

The parole officer may revoke the parolee to a state correctional facility. The parole officer must consult with the director of the parolee's outpatient program before seeking a return to prison.

8. Review of Inpatient Placement

If DMH has not placed a parolee on outpatient treatment within 60 days, the parolee may request a hearing before the Board of Prison Terms. The burden of proof shall be on DMH to demonstrate the person requires inpatient treatment. If requested by the parolee, the Board shall appoint two panelists.

A prisoner who disagrees with the Board of Prison Terms' decision that he meets commitment criteria may require the Superior Court to review the case within 60 days. The standard of proof is beyond a reasonable doubt, and the jury must be unanimous in its verdict.

9. Release from State Hospital

If the Director of Mental Health notifies the Board of Prison Terms that the prisoner's mental disorder is in remission and can be kept in remission, the Department shall discharge the parolee.

10. Civil Commitment

At the end of the parole period, authority for continued treatment may be obtained through a court hearing, similar to an extension hearing in which the prosecuting attorney is notified and may petition the court for a judicial commitment. The standard of proof shall be beyond a reasonable doubt and the jury must be unanimous in its verdict. The criteria are the same as those for the commitment while the person is under parole status. The commitment is to be for a one-year period. Patients civilly committed to state hospitals may be released on outpatient status if the committing court finds as reasonable cause to believe the person can be safely and effectively treated in the community.

11. Cost

The cost of inpatient or outpatient treatment shall be at state expense while the person is under jurisdiction of CDC.

12. Limitation on State Hospital Patients

The statutory limit on the number of Penal Code patients and the prohibition against placing prisoners in state hospitals is removed. Existing law limited the number of judicially committed patients and prohibited state prison inmates from receiving treatment in certain state hospitals.

13. Patient Rights

The rights of patients civilly commited under the LPS Act are applied also to these patients; however, the Department of Mental Health may adopt regulations to modify these rights as necessary to provide reasonable security in an inpatient facility. These regulations are to become operative January 1, 1987.

14. County Placement

Current law requires that persons be paroled back to the county from which they were committed. The bill adds an exception that a different county may be selected if there is a lack of necessary outpatient programs for parolees under this new commitment.

15. Impact on Mental Health

The provision of this bill which pertain to state hospital treatment will clearly require expansion of the state hospital system. The bill makes specific reference to the state being responsible for community treatment of these patients as well. Response from county mental health programs indicates a very strong reluctance to serve these patients. An entire system of contract providers will clearly be much too fragmented to provide any degree of effective services. As a result it will probably be necessary for the state to provide many of the community services directly using state employees. (See attachment on community services, if state employees are needed to provide all community services.)

FISCAL IMPACT

The fiscal impact of the bill will be (in millions):

| 86-87 | 87-88 | 88-89 | 89-90 | 90-91 |
|---|---|---|---|---|
| $23.3 | $41.7 | $58.5 | $75.1 | $82.8 |

The attached assumptions and fiscal impact chart provide additional information concerning these costs. Court costs are not included.

RECOMMENDATION

Sign. California is currently caught in a dilemma caused by the determinate sentencing system. To maintain a determinate system will inevitably cause the release of some mentally ill inmates who constitute a significant threat to public safety. This commitment will provide a mechanism for placing these mentally ill inmates in the mental health system for appropriate treatment which will increase the protection of the public.

The criteria as enacted by this bill are particularly complex. Anticipation of their impact on the ability to place those people who have severe mental disorders in the mental health system are somewhat difficult to anticipate. Only through the actual application of these commitment criteria and their interpretation by the courts may a determination be made if the Administration goals in establishing this commitment are in fact met. Modification of these criteria through statutory revision may, as a result, be necessary.

The bill will clearly impact the state hospital system and require the addition of secure beds. These beds must be constructed in a manner which both meets maximum security needs as well as architecturally facilitates the delivery of treatment services in an effective manner. Many of the problems which have arisen in constructing state prison beds will probably arise in this area as well. Given the population to be detained, it is possible the problems may even be more intense.

The outpatient services required under the bill are the responsibility of the State Department of Mental Health. The Department is currently negotiating with counties to provide community services under a separate contractual relationship for judicially committed patients, i.e. Not Guilty by Reason of Insanity, Incompetent to Stand Trial, and Mentally Disordered Sex Offender. Although some counties are willing to serve judicially committed patients, it is extremely unlikely that many will be willing to serve the parolees treated under this new commmitment. Because of the complexity of a statewide system and the significant responsibility in effectively treating these patients, a statewide contract system may not be feasible. As a result the state may have to run most of this system directly, which will entail additional positions. (See attachment on community services.)

RECOMMENDATION (Continued)

The courts are beginning to address the issue of commitment criteria and due process protection for state prison inmates who are provided involuntary mental health treatment. The forthcoming case law may well impact individuals under this new commitment. This may require restructuring the commitment through statutory amendment.

CONTACT PERSON

Richard Mandella, Chief
Forensic Services Branch

Office phone: 322-0268

Attachments

DEPARTMENT OF MENTAL HEALTH - FORENSICS BRANCH
SB 1296 - Fiscal Impact with Personality Disorders Excluded

| | NOTES | YEAR 1 | YEAR 2 | YEAR 3 | YEAR 4 | YEAR 5 | YEAR 6 | YEAR 7 | YEAR 8 | YEAR 9 | YEAR 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| DMH - INPATIENT COSTS | (1) | | | | | | | | | | |
| Population | | 285 | 500 | 690 | 880 | 975 | 1,062 | 1,142 | 1,222 | 1,237 | 1,252 |
| Services Costs ($1,000) | (2) | $21,186 | $37,168 | $51,292 | $65,416 | $72,478 | $78,945 | $84,892 | $90,839 | $91,954 | $93,069 |
| Personnel Years | (3) | 636 | 1115 | 1539 | 1962 | 2174 | 2368 | 2547 | 2725 | 2759 | 2792 |
| Capital Outlay - Annual | (4) | $4,500 | $60,000 | $23,750 | $23,750 | $11,875 | $10,875 | $10,000 | $10,000 | $1,875 | $1,875 |
| DMH - OUTPATIENT COSTS | | | | | | | | | | | |
| Population | | 137 | 350 | 593 | 836 | 958 | 1,049 | 1,110 | 1,170 | 1,231 | 1,292 |
| Services Costs ($1,000) | (5) | $2,736 | $6,992 | $11,856 | $16,720 | $19,152 | $20,976 | $22,192 | $23,408 | $24,624 | $25,840 |
| DMH Support at 10% | | $274 | $699 | $1,186 | $1,672 | $1,915 | $2,098 | $2,219 | $2,341 | $2,462 | $2,584 |
| Total Outpatient | | $3,010 | $7,691 | $13,042 | $18,392 | $21,067 | $23,074 | $24,411 | $25,749 | $27,086 | $28,424 |
| OTHER COSTS/SAVINGS | | | | | | | | | | | |
| DMH Outpatient Revocations | (6) | $2,330 | $5,956 | $10,098 | $14,241 | $16,313 | $17,867 | $18,902 | $19,938 | $20,974 | $22,010 |
| CDC Reoffense Savings | (7) | ($850) | ($2,563) | ($4,738) | ($6,931) | ($8,692) | ($9,939) | ($10,808) | ($11,561) | ($12,144) | ($12,597) |
| CDC Revocation Savings | (8) | ($589) | ($1,187) | ($1,792) | ($2,397) | ($2,699) | ($2,948) | ($3,145) | ($3,342) | ($3,448) | ($3,553) |
| CDC/DMH Certifications | | $360 | $610 | $650 | $650 | $650 | $650 | $650 | $650 | $650 | $650 |
| TOTAL COST W/O CAPITAL OUTLAY | | $23,317 | $41,719 | $58,454 | $75,130 | $82,804 | $89,782 | $96,000 | $102,335 | $104,098 | $105,993 |

## Fiscal Impact Assumptions

1. Approximately 19,000 prisoners are released from California Department of Corrections in 1984.

2. Six percent, or 1,140, will be referred to the Department of Mental Health under provisions of SB 1296. (This is the number of parolees referred by the Board of Prison Terms for treatment.) Only 40 percent, or 456, of these parolees have major mental disorders. Other parolees, including those with personality disorders, would not be committed.

3. Fifty percent of those referred will need inpatient treatment.

4. Fifty percent, or 228, of those referred will need outpatient treatment for four years.

5. Of those needing inpatient treatment:

   (a) One-third will be long-term patients with an average length of stay of eight years.

   (b) One-third will have an average length of stay of four years.

   (c) One-sixth will have an average length of stay of two years.

   (d) One-sixth will have an average length of stay of one year.

   (e) At the end of the patient's inpatient treatment, all patients will require an additional average length of treatment on an outpatient basis for four years.

6. This bill refers to the mental health treatment need of inmates being met while they are serving their determinate terms. Currently, 375 state hospital beds are to be made available for PC 2684 patients; i.e., inmates transferred for treatment. This resource is assumed to be adequate for persons serving their prison terms.

7. The criteria and due process provision which were added to this bill at the end of the session will reduce the population committed to state hospitals by 15%.

SB 1296 Footnotes

**Inpatient Costs:**

1/ Effective date of bill is July 1, 1986; therefore year one is 1986-87.

2/ Based on $74,336 per patient per year.

3/ Staffing formula of 2.23 staff per patient.

4/ Capital outlay costs will not begin until the second year because of planning and development needed. DMH does not have any hospital bed space in a secured facility for this population. Estimated capital outlay cost to build is approximately $125,000 per bed, which includes only the basic facility. Complete planning and development costs are not included in the estimate. These capital outlay costs are for expanding an existing hospital. If a new hospital on a new site is required, further outlay will be needed for site acquisition, site development, recreational areas, ancillary services, utility development, kitchens, cafeterias, etc.It is estimated that 900 beds per hospital would be maximum for this population. Capital outlay costs for year one is based on $2 million for security fencing at Patton State Hospital which will allow the Department to accommodate some patients referred during the first year. It also includes $2.5 for preliminary planning and work drawings needed for capital outlay in the second year. The amount shown for capital outlay in year two has been reduced by $2.5 million for this purpose.

5/ Based on $20,000 per year per patient.

6/ It is estimated that the DMH outpatient revocation rate will be 20%. Average length of stay on revocations is 11 months or $68,141 per revocation. The amounts shown in this line are for informational purposes only. The costs are included in the Inpatient Services Costs line.

7/ CDC reoffense rate is 14% with an average length of stay of 30.2 months at $1,200 per month.

8/ CDC revocation rate is 29.1% with an average length of stay of four months at $1,200 per month.

## SUMMARY OF COMMUNITY SERVICES

If the state is to provide the necessary supervision and treatment services to this population, it is anticipated that the following personnel years will be needed.

| | |
|---|---|
| Year 1 | 101 |
| Year 2 | 257 |
| Year 3 | 436 |
| Year 4 | 614 |
| Year 5 | 704 |
| Year 6 | 771 |
| Year 7 | 816 |
| Year 8 | 860 |
| Year 9 | 905 |
| Year 10 | 950 |

The above personnel year estimates are for supervision and anticipated treatment of patients identified for the program and some support based on treatment in the patient's area of residence. Costs and personnel years will vary considerably by using a centralized treatment system versus a decentralized system. The estimates for personnel years are understated during earlier years due to an economy of scale. (i.e. more staff proportionately will be needed to serve a smaller patient population than a larger population.) If the state is required to provide all community services in all areas of the state, the cost may be partially defrayed by funds estimated for outpatient treatment noted in fiscal impact chart.

STATE OF CALIFORNIA
1600 – 9TH STREET, ROOM 140
SACRAMENTO, CA 95814
(916) 323-3301

GEORGE DEUKMEJIAN, Governor

# CITIZENS ADVISORY COUNCIL

**TO ADVISE AND ASSIST THE LEGISLATURE AND DIRECTOR OF MENTAL HEALTH**

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Mental Health
Administration

April 22, 1985

Honorable Dan McCorquodale
State Senate
State Capitol, Room 4032
Sacramento, CA 95814

Dear Senator McCorquodale:

OPPOSE/SB 1296

The Citizens Advisory Council opposes SB 1296. The Citizens Advisory Council is the body mandated in statute to advise the Legislature on matters related to mental health. A code citation may be found on the reverse side of this page.

SB 1296, which calls for the "treatment" of inmates who have a mental disorder that is "not in remission or cannot be kept in remission" would seem to create a loop-hole in the determinant sentencing program. Also, it appears to be based on the unwarranted belief that mentally disordered criminals are more dangerous than non-mentally dis-ordered criminals. An alternative way to deal with what seems to be the basic problem would be longer prison terms for repeat violent offenders.

This bill seems to confuse the concepts of treatment and punishment. It would likely lead to longer terms of impri-sonment for criminals with mental disorders than for other criminals who may be equally or more violent but who have not been diagnosed as having mental disorders.

The procedural aspects outlined in this bill are difficult to appreciate. The bill is similar to legislation in other states that allow for the finding that an individual is guilty but mentally ill. The second criterion for treatment as a condition of parole states: "The mental disorder caused, was one of the causes of, or was an aggravating factor in the commission of the crime for which the prisoner was sentenced to prison." If this criterion has been met, it suggests that the individual should have been found "Not Guilty by Reason of Insanity" and placed in the appropriate program.

The third criterion for treatment as a condition of parole is that "The prisoner has received medical or mental health treatment for the mental disorder while in prison." The criterion is extremely general and vague, and it does not address the nature of either the disorder or treatment, or whether the prisoner still requires treatment. The use of such a criterion would also likely have the effect of discouraging inmates from seeking voluntary treatment while incarcerated.

The bill further calls for inpatient treatment "unless the State Department of Mental Health certifies to the Board of Prison Terms that the prisoner will not be a danger to the health and safety of others while on outpatient status." First of all, research indicates that the presence of a mental disorder is a poor predictor of violent acts. Second, the determination of future danger to others is beyond the competence of mental health professionals. In the process of predicting, clinicians are prone to several types of systematic error that make such predictions inherently unreliable. Also, psychiatrists and psychologists are able to accurately predict only one out of three future incidents of violent behavior.

Finally, the term "treatable mental disorder" is unclear because "treatable" is not defined. Does this refer only to mental disorders that would respond to psychotropic medications? Are these the people who need most to be controlled? The use of this term also allows for the possible conclusion that if the disorder is not treatable, the prisoner will not be held. (The term "remission" on page 3, line 18 is likewise not defined.)

Unless there are substantial amendments to this bill, the Council regrets that it must oppose SB 1296.

Sincerely,

Stephen F. Morin

Stephen F. Morin, Ph.D.
Chairperson

Honorable Dan McCorquodale
Member of the Senate
State Capitol, Room 4032
Sacramento, CA 95814

| DEPARTMENT | AUTHOR | BILL NUMBER |
|---|---|---|
| Finance | McCorquodale<br>Presley | SB 1296 |
| SPONSORED BY | RELATED BILLS | DATE LAST AMENDED |
| | | April 18, 1985 |

BILL SUMMARY

This bill would provide for the involuntary commitment of inmates as a condition of parole when a prisoner has a mental disorder which is not in remission or cannot be kept in remission. This is necessary in order to protect the public from such persons.

SUMMARY OF COMMENTS

This bill appears to circumvent the limitations of the determinate sentencing system. Could be viewed as a mechanism to provide authority to the Correctional system to inflict additional punishments. Potential for major fiscal impact. Defer to Health and Welfare and Youth and Adult Corrections agencies for policy.

FISCAL SUMMARY--STATE LEVEL

| Department/Agency or Revenue Type | Code | SO LA CO RV | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1984-85 | FC 1985-86 | FC 1986-87 | Code | Fund |
|---|---|---|---|---|---|---|---|
| Corrections | 5240 | SO | -- | -- | C $2,500 | 001 | General |

ANALYSIS

A. Specific Findings

Current law provides that the Department of Corrections (CDC), before releasing an inmate who meets the Lanterman-Petris-Short Act involuntary commitment criteria, may place that person in a State Hospital.

This bill would additionally permit the CDC to involuntarily commit inmates to State Hospitals as a condition of parole when the prisoner has:

1) a mental disorder which is not in remission or cannot be kept in remission
2) the mental disorder caused, was one of the causes, or was an aggravating factor in commission of the crime for which the prisoner was sentenced.
3) the prisoner has been in treatment for 90 days or more while in prison
4) certification by Corrections and/or Mental Health that 1) or 2) above exist or that the inmate will not follow appropriate voluntary treatment.
5) committed a crime in which the prisoner used force or violence or caused serious bodily injury.

See DMH analysis

POSITION
Defer - policy

Department Director Date

OPPOSE COST - SB 1054 is superior approach

BILL ANALYSIS--(continued) Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale/Presley | April 18, 1985 | SB 1296 |

ANALYSIS

A. Specific Findings (Continued)

Prisoners meeting these criteria will be committed to the Department of Mental Health for inpatient treatment. If the Department of Mental Health certifies to the Board of Prison Terms that the person will not be a danger to others while on outpatient status then the person may be placed in an involuntary outpatient program.

The due process protections for this involuntary commitment to state hospital is a hearing before the Board of Prison Terms with the burden of proof upon the inmate.

If the person's mental disorder can be kept in remission, then the commitment can be terminated.

If near the end of the person's parole the mental disorder still cannot be kept in remission then the medical director of the state hospital, the county mental health director, or the Director of Correcions must notify the local prosecuting attorney who may petition the court for an additional one year commitment. The court hearing is to be based on the standard of a preponderance of the evidence.

The one year commitment to mental health is renewable by another court hearing.

The costs of treatment are to be a state expense while the person is under the jurisdiction of the Department of Corrections, i.e., a prison inmate or a parolee. After the parole status is over then the person would become the responsibility of the county mental health program.

The duration of parole is to be two years unless the Board of Prison Terms determines for good cause that the person should remain on parole longer.

An additional exception would be made to the statutory requirement that each inmate be paroled to the county from which he was committed. An inmate could be paroled to another county if the necessary outpatient program is unavailable.

B. Fiscal Analysis

The Department of Mental Health indicates that information provided by Corrections' Data Analysis Unit indicates that approximately 19,000 prisoners were released to parole during calendar year 1984. According to the Parole and Community Services Division of Correcitons, anywhere from 6 percent to 8 percent of the prisoners released on parole are referred to outpatient psychiatric treatment programs.

Assumptions:

6 percent of the 19,000 parolees are referred to Department of Mental Health for treatment (1,140 parolees).

One-half of the parolees (570) will be placed in inpatient care at the cost of $52,000 per person per year. The other half (570) placed in outpatient care at $12,000 per year.

(Fiscal Analysis Continued)

BILL ANALYSIS--(continued) Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale/Presley | April 18, 1985 | SB 1296 |

ANALYSIS

B. Fiscal Analysis (Continued)

First year cost would be as follows:

| | | | | |
|---|---|---|---|---|
| Inpatient care | 570 | x $52,000 | = | $29,640,000 |
| Outpatient care | 570 | x $12,000 | = | 6,840,000 |
| TOTAL treatment cost | | | | $36,480,000 |

The Department of Mental Health has indicated that the influx of population which would increase due to the provisions of this bill may create the need to provide for new facilities. At the time of this analysis the cost of such capital outlay was not available, but can be assumed to be quite substantial.

This estimate seems to be extremely large given some of the provisions included in the bill. For example, this bill would only impact those inmates who have received at least 90 days of treatment or the mental disorder must be a cause or an aggravating factor. Many offsets also need to be considered such as the costs already being paid by Corrections for outpatient treatment and length of stay factor for inpatient status. Many other facets impacting the population would tend to reduce these costs projected. An exact estimate is unavailable to be projected however it would still appear that even if the DMH estimate is reduced to 25% or 250 eligible parolees the costs would still be in the major range ($2,500,000).

State of California—Health and Welfare Agency | Department of Mental Health

**BILL ANALYSIS**

MH 35 (7/81)

| Department | Author | Bill Number |
|---|---|---|
| Mental Health | McCorquodale | SB 1296 |
| **Sponsored By** | **Related Bills** | **Date Last Amended** |
| Joint Committee for the Revision of the Penal Code | SB 1054 | Original |

**Summary**

Although there is no specific reference to this being a "mentally disordered violent offender commitment", the bill falls into this general category. This bill represents an attempt to resolve the limitations of the determinate sentencing system of prison inmates by creating a new civil mental health commitment.

LEGISLATIVE BACKGROUND

Senator McCorquodale co-chaired the Joint Legislative Committee on Mental Disorders and Genetic Diseases with Assemblyman Bronzan.

Ned Cohen, consultant to the Joint Committee for Revision of the Penal Code, prepared the bill for Senator McCorquodale.

SB 1054 (Lockyer) would establish a Mentally Disordered Violent Offender commitment, but this bill limits the commitment to those inmates who are a substantial danger of physical harm to others due to a mental disorder. SB 1054 is sponsored by the Governor.

A recent meeting with the Governor's Office and representatives of the Department of Corrections and Department of Mental Health on SB 1054 resulted in a decision that those MDVOs who are amenable to treatment in state hospital programs would be treated in an appropriately secure state hospital. Those who are not amenable to treatment in state hospital programs, or who need stricter security measures than are available within state hospitals, will be placed in treatment units operated by the Department of Corrections.

PROGRAM BACKGROUND

There are currently about 200 mentally ill prison inmates served by the state hospitals under Penal Code Section 2684, and about 10 parolees treated under Penal Code 2960. This latter statute authorizes the treatment of a mentally ill parolee under the provisions of the Lanterman-Petris-Short Act, but at no cost to the county of commitment. An interagency agreement between the Department of Corrections and the Department of Mental Health provides that there are to be 300 state hospital beds for these mentally ill inmates and parolees, but insufficient referrals have failed to keep these beds occupied.

SPECIFIC FINDINGS

1. The bill provides that certain mentally ill prison inmates should be retained for treatment in order to protect the public. Prison inmates may be involuntarily committed to the Department of Mental Health as a condition of parole from prison if the following applies:

| Position | | | | Governor's Office Use | |
|---|---|---|---|---|---|
| OPPOSE | | | | Position Noted | |
| | | | | Position Approved | ✓ |
| Department Director | Date | Agency Secretary | Date | Position Disapproved | |
| [signature] | 4/19/85 | [signature] | 4-22-85 | By: [signature] | Date 5/6 |

SPECIFIC FINDINGS (Continued)

a. The prisoner has a mental disorder which is not in remission and for which he received treatment while in prison.

b. The prisoner has a mental disorder which caused the crime or was an aggravating factor in its commission.

c. The prisoner is certified by the Corrections and/or Mental Health staff to the Board of Prison Terms to meet the first criteria and will not follow appropriate voluntary treatment.

d. The prisoner committed a crime by force or caused serious bodily injury in its commission.

Prisoners meeting these criteria will be committed to the Department of Mental Health for inpatient treatment. If the Department of Mental Health certifies to the Board of Prison Terms that the person will not be a danger to others while on outpatient status then the person may be placed in an involuntary outpatient program.

2. The due process protections for this involuntary commitment to state hospital is a hearing before the Board of Prison Terms with the burden of proof upon the inmate.

3. If the person's mental disorder can be kept in remission, then the commitment can be terminated.

4. If near the end of the person's parole the mental disorder still cannot be kept in remission then the medical director of the state hospital, the county mental health director, or the Director of Corrections must notify the local prosecuting attorney who may petition the court for a one year commitment. The court hearing is to be based on the standard of a preponderance of the evidence.

5. The one year commitment to mental health is renewable by another court hearing.

6. The costs of treatment are to be a state expense while the person is under the jurisdiction of the Department of Corrections, i.e., a prison inmate or a parolee. After the parole status is over then the person would become the responsibility of the county mental health program.

7. The duration of parole is to be two years unless the Board of Prison Terms determines for good cause that the person should remain on parole longer.

8. An additional exception would be made to the statutory requirement that each inmate be paroled to the county from which he was committed. An inmate could be paroled to another county if the necessary out-patient program is unavailable.

SPECIFIC FINDINGS (Continued)

9. The current law provisions about placing a mentally ill inmate or parolee in a state hospital who meets Lanterman-Petris-Short act criteria remains intact. This bill addresses those who do not meet these LPS criteria.

10. The provisions of this bill relating to criteria for involuntary civil commitment after parole has terminated are probably constitutionally inadequate and are likely to be overturned by the courts.

FISCAL IMPACT

Information provided by Corrections' Data Analysis Unit indicates that approximately 19,000 prisoners were released to parole during calendar year 1984. According to the Parole and Community Services Division of Corrections, anywhere from 6 percent to 8 percent of the prisoners released on parole are referred to outpatient psychiatric treatment programs.

Assumptions:

6 percent of the 19,000 parolees are referred to Department of Mental Health for treatment, 1,140 parolees.

One-half of the parolees will be placed in inpatient care at the cost of $52,000 per person per year, 570 parolees.

The remaining half of the parolees will be placed in outpatient care at the cost of $12,000 per person per year. 570 parolees.

First year cost would be as follows:

| | | | |
|---|---|---|---|
| Inpatient care | 570 x $52,000 | = | $29,640,000 |
| Outpatient care | 570 x $12,000 | = | 6,840,000 |
| Total treatment cost | | = | $36,480,000 |

RECOMMENDATION

OPPOSE. This bill represents an inappropriate attempt to circumvent the limitations of the determinate sentencing system of prison inmates by creating a new mental health commitment. The fact that the person committed a crime of force and has a mental disorder would constitute grounds to continue the person under a commitment which might run for life. This is unnecessarily expensive.

If the intent is to protect the public from reoffense by these mentally ill offenders, then the commitment criteria should be restricted to those persons who represent a substantial danger to the health and safety of others. This bill does not require that the client be shown to be legally dangerous either to self or others. This concept is presented in AB 1054 (Lockyer), which is sponsored by the Governor.

RECOMMENDATION (Continued)

Should the Board of Prison Terms elect not to continue the person's parole beyond the two-year limit, then county mental health programs would presumably be required to pay local match for state hospital treatment to the patients as well as have some type of reductions in their allocation of state hospital days. This will place county mental health programs in a position of financial responsibility for patients which they did not place in a state hospital and do not have authority to remove.

SB 1054 presents a superior mechanism to meet the treatment needs of those mentally ill prison inmates who reach the end of their prison terms and who present a substantial danger to the public.

Honorable Dan McCorquodale
Member of the Senate
State Capitol, Room 4032
Sacramento, CA 95814

DEPARTMENT
Finance

BILL NUMBER
SB 1296

AUTHOR
McCorquodale et al.

DATE LAST AMENDED
September 10, 1985

SUBJECT

This bill would provide for the involuntary commitment of inmates as a condition of parole when a prisoner has a mental disorder which is not in remission or cannot be kept in remission.

SUMMARY OF REASONS FOR SIGNATURE

This bill is necessary in order to protect the public from persons who reach the end of their determinate sentence but continue to pose a threat to the public health and safety due to mental illness.

FISCAL SUMMARY--STATE LEVEL

| Department/Agency or Revenue Type | Code | SO LA CO RV | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1985-86 | FC 1986-87 | FC 1987-88 | Code | Fund |
|---|---|---|---|---|---|---|---|
| Mental Health | 4440 | SO | $-0- C | $22,442 C | $42,996 C | 001 | General |
| Capital Outlay | | | -0- C | -0- C | $52,250 C | 001 | General |

HISTORY, SPONSORSHIP, AND RELATED BILLS

SB 1054, Lockyer is double-joined with AB 1296 and will facilitate the actual extension of the commitment periods provided mentally disordered offenders. We have recommended signature of SB 1054.

ANALYSIS

A. Specific Findings

Current law provides that the Department of Corrections (CDC), before releasing an inmate who meets the Lanterman-Petris-Short Act involuntary commitment criteria, may place that person in a State Hospital.

This bill would additionally permit the CDC to involuntarily commit inmates to State Hospitals as a condition of parole when the prisoner has:

1) a severe or major mental disorder which is not in remission or cannot be kept in remission.
2) the mental disorder caused, was one of the causes, or was an aggravating factor in commission of the crime for which the prisoner was sentenced.
3) the prisoner has been in treatment for 90 days or more while in prison
4) certification by Corrections and/or Mental Health that 1) or 2) above exist or that the inmate will not follow appropriate voluntary treatment.
5) committed a crime in which the prisoner used force or violence or caused serious bodily injury

(Specific Findings Continued)

RECOMMENDATION
SIGN the bill

Department Director — Date
SEP 25 1985

| Principal Analyst | Date | Program Budget Manager | Date |
|---|---|---|---|
| (522) G. Kuwabara | 9-25-85 | C. David Willis | 9-25-85 |
| C. Camacho | 9-25-85 | C. D Willis | 9/85 |

Governor's Office use
Position noted
Position approved
Position disapproved
by: date:

H: 3874N
ENROLLED BILL

Form DF-43 (Rev 1/85 500 Bu)

ENROLLED BILL REPORT (Continu[redacted] Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale/Presley | September 10, 1985 | SB 1296 |

ANALYSIS

A. Specific Findings (Continued)

Prisoners meeting these criteria will be committed to the Department of Mental Health for inpatient treatment. If the Department of Mental Health certifies to the Board of Prison Terms that the person will not be a danger to others while on outpatient status then the person may be placed in an involuntary outpatient program. All persons will be placed for inpatient treatment for 60-90 days in order to determine if outpatient treatment is feasible for them.

The due process protections for this involuntary commitment to state hospital is a hearing before the Board of Prison Terms with the burden of proof upon the inmate.

If the person's mental disorder can be kept in remission, then the commitment can be terminated.

If near the end of the person's parole the mental disorder still cannot be kept in remission then the medical director of the state hospital, the county mental health director, or the Director of Corrections must notify the local prosecuting attorney who may petition the court for an additional one year commitment. The court hearing is to be based on the standard of a preponderance of the evidence.

The one year commitment to mental health is renewable by another court hearing.

The costs of treatment are to be a state expense while the person is under the jurisdiction of the Department of Corrections, i.e., a prison inmate or a parolee. After the parole status is over then the person would become the responsibility of the county mental health program.

The duration of parole is to be two years unless the Board of Prison Terms determines for good cause that the person should remain on parole longer.

An additional exception would be made to the statutory requirement that each inmate be paroled to the county from which he was committed. An inmate could be paroled to another county if the necessary outpatient program is unavailable.

B. Fiscal Analysis

The Department of Mental Health indicates that information provided by Corrections' Data Analysis Unit indicates that approximately 19,000 prisoners were released to parole during calendar year 1984. According to the Parole and Community Services Division of Corrections 6 percent of the prisoners released on parole are referred to outpatient psychiatric treatment programs.

Assumptions:

6 percent of the 19,000 parolees are referred to Department of Mental Health for treatment (1,140 parolees).

40 percent, or 456 will have major mental disorders and require treatment. DMH has a number of assumptions regarding inpatient treatment, outpatient treatment and capital outlay expenditures. Based on these assumptions, the attached chart is the best estimate of costs and positions at this time. The first year cost (1986-87) is estimated to be $22.4 million, the following year $95.2 million which includes capital outlay expenditures of $52.3 million.

BILL ANALYSIS--(continued) Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale et al. | September 10, 1985 | SB 1296 |

ANALYSIS

B. Fiscal Analysis (Continued)

The attached chart indicates a need for 433 personnel years in 1986-87 for inpatient treatment. This is based on a higher staffing ratio than is currently approved, and subject to future negotiations.

The estimated costs are very broad and are subject to revision based on continued discussion on how the bill will actually be implemented. The chart does not show the following costs or positions since there is not yet a firm estimate on them:

- If counties do not participate in the program and it is administered by the State there may be a potential position impact the first year of 22 personnel years with subsequent years having a greater personnel year impact.
- No facilities planning staff has been included.
- No positions have been included for the appeal process.
- The certification process may require an additional 7 personnel years for DMH.
- The cost and personnel year savings which may result from CDC handling less parolees has not yet been determined.

The capital outlay assumes additional beds will be added to existing State facilities. If new facilities need to be built, the cost would be considerably more.

H:3874N3

| | 1986-87 | 1987-88 | 1988-89 | 1989-90 | 1990-91 | 1991-92 | 1992-93 | 1993-94 | 1994-95 | 1995-96 |
|---|---|---|---|---|---|---|---|---|---|---|
| DMH - INPATIENT COSTS | | | | | | | | | | |
| Population | 194 | 355 | 485 | 614 | 678 | 743 | 808 | 872 | 872 | 872 |
| Service Costs (Costs cumulative & $'s in thousands) | $14,421 | $26,389 | $36,053 | $45,642 | $50,400 | $55,232 | $60,063 | $64,821 | $64,821 | $64,821 |
| Personnel Years (cumulative) | 433 | 792 | 1082 | 1369 | 1512 | 1657 | 1802 | 1945 | 1945 | 1945 |
| Capital Outlay-Annual ($ in thousands) | $0 | $52,250 | $19,000 | $19,000 | $9,500 | $9,500 | $9,500 | $9,500 | $0 | $0 |
| DMH - OUTPATIENT COSTS | | | | | | | | | | |
| Population | 228 | 494 | 798 | 1,102 | 1,254 | 1,368 | 1,444 | 1,520 | 1,596 | 1,672 |
| Service Costs (Costs cumulative & $'s in thousands) | $4,560 | $9,880 | $15,960 | $22,040 | $25,080 | $27,360 | $28,880 | $30,400 | $31,920 | $33,440 |
| DMH Support at 10% | $456 | $988 | $1,596 | $2,204 | $2,508 | $2,736 | $2,888 | $3,040 | $3,192 | $3,344 |
| Total Outpatient | $5,016 | $10,868 | $17,556 | $24,244 | $27,588 | $30,096 | $31,768 | $33,440 | $35,112 | $36,786 |
| OTHER COSTS/SAVINGS | | | | | | | | | | |
| DMH Outpatient Revocations | $3,107 | $6,732 | $10,875 | $15,018 | $17,090 | $18,643 | $19,679 | $20,715 | $21,751 | $22,786 |
| CDC Reoffense Savings | ($391) | ($1,107) | ($1,896) | ($2,585) | ($3,110) | ($3,504) | ($3,833) | ($4,161) | ($4,358) | ($4,424) |
| CDC Revocation Savings | ($271) | ($496) | ($677) | ($858) | ($947) | ($1,038) | ($1,129) | ($1,218) | ($1,218) | ($1,218) |
| CDC/DMH Certifications | $560 | $610 | $650 | $650 | $650 | $650 | $650 | $650 | $650 | $650 |
| TOTAL COST W/O CAPITAL OUTLAY | $22,442 | $42,996 | $62,561 | $82,111 | $91,671 | $100,079 | $107,198 | $114,247 | $116,758 | $119,399 |
| Capital Outlay Cost ($'s in thousands) | $0 | $52,250 | $19,000 | $19,000 | $9,500 | $9,500 | $9,500 | $9,500 | $0 | $0 |

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...NORTON
...BRACKEY
... DEPUTIES

... L. ASHFORD
... L. BASSETT
...LEY M. LOURIMORE
...RD K. PURCELL
... T. STUDEBAKER

... D. ALVES
... A. CORZINE
...VID DICKERSON
... CULLEN DUFFY
... D. GRONKE
...WIN C. MACKENZIE, JR.
... O. POWELL II
... WING
...CIPAL DEPUTIES

... STATE CAPITOL
...RAMENTO 95814
... 445-3057

... STATE BUILDING
... SOUTH BROADWAY
...ANGELES 90012
... 620-2550

# Legislative Counsel of California

**BION M. GREGORY**

MARTIN L. ANDERSON
PAUL ANTILLA
DANA APPLING
CHARLES C. ASBILL
AMELIA L. BUDD
ELLEEN J. BUXTON
HENRY J. CONTRERAS
BEN E. DALE
JEFFREY A. DELAND
CLINTON J. DEWITT
FRANCES S. DORBIN
MAUREEN S. DUNN
LAWRENCE H. FEIN
SHARON R. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
EVE B. KROTINGER
ROMULO I. LOPEZ
JAMES A. MARSALA
PETER MELNICOE
ROBERT G. MILLER
JOHN A. MOGIDI
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MICHAEL B. SALERNO
MARY SHAW
RUSSELL L. SPARLING
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
PHILLIP TORRES
MICHAEL H. UPSON
RICHARD B. WEBBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JANA WHITGROVE
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California

December 5, 1985

Honorable Dan McCorquodale
4032 State Capitol

Parole: Mental Health Treatment - #23861

Dear Senator McCorquodale:

## QUESTION

Under subdivision (d) of Section 2960 of the Penal Code, as amended by Chapter 1419 of the Statutes of 1985, will a parolee who has not had any mental health treatment required as a condition of parole be entitled to a jury trial to review a Board of Prison Terms decision to retain that person on parole under Section 3001 of the Penal Code?

## OPINION

Subdivision (d) of Section 2960 of the Penal Code, as amended by Chapter 1419 of the Statutes of 1985, will not entitle a parolee to a jury trial to review a Board of Prison Terms decision to retain that person on parole under Section 3001 of the Penal Code if that person has not had any mental health treatment required as a condition of parole.

## ANALYSIS

Section 2960 of the Penal Code* was amended by Chapter 1419 of the Statutes of 1985 which will become effective January 1, 1986 (subd. (c), Sec. 8, Art. IV, Cal. Const.), and will

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* All section references are to sections of the Penal Code.

become generally operative on July 1, 1986 (Sec. 3, Ch. 1419, Stats. 1985). That section, as amended, will require a prisoner who meets the criteria set forth in subdivision (b) of that section to be treated by the State Department of Mental Health as a condition of parole.

Subdivision (d) of Section 2960 will permit a prisoner to request a hearing before the Board of Prison Terms to prove that the prisoner does not meet the criteria of subdivision (b), and if the prisoner disagrees with the determination by the board, will provide for a petition to the superior court for a hearing on whether he or she meets the criteria of subdivision (b). The hearing before the superior court will include a trial by jury (para. (2), subd. (d), Sec. 2960).

Paragraph (3) of subdivision (d) of Section 2960 will provide that the "provisions of this subdivision shall be applicable to a continuation of a parole pursuant to Section 3001."

Section 3001 authorizes parole to be ordered continued beyond a basic one-year or three-year period if the Board of Prison Terms determines there is good cause for this continuation.

The question presented here is whether paragraph (3) of subdivision (d) of Section 2960 will extend the right to a jury trial to all reviews of continuations of parole or whether the right to a jury trial will be more limited in scope.

In construing a statute, the statute should be applied according to the plain meaning of its words, and, where interpretation is necessary, should be interpreted in light of their purpose (Morse v. Municipal Court, 13 Cal. 3d 149, 156).

An interpretation of subdivision (d) of Section 2960 that extended the right to jury trial to all reviews of continuations of parole would be inconsistent with the remainder of Chapter 1419 of the Statutes of 1985, which deals only with mental health problems. That interpretation would also be inconsistent with the plain language of subdivision (d) of Section 2960. Under that subdivision, the review by a superior court with a right to a jury trial is limited to a single aspect of the parole process; i.e., whether the prisoner meets the

criteria of subdivision (b) of Section 2960 and thus needs mental health treatment as a condition of parole. That limitation of the scope of review in a jury trial exists with respect to an original grant of parole. Thus, when paragraph (3) of subdivision (d) of Section 2960 provides that the entire subdivision is applicable to a continuation of parole, the same limitation on the scope of review at a jury trial as is applicable to an original grant of parole is made applicable to a continuation of parole hearing. Thus, with respect to a continuation of parole, a jury may only review a determination of whether a parolee meets the criteria of subdivision (b) of Section 2960. If there has been no determination that a parolee needs mental health treatment because he or she meets the criteria of subdivision (b) of Section 2960, there can be no subject matter for review by a jury.

Consequently, subdivision (d) of Section 2960 will not entitle a parolee to a jury trial to review a Board of Prison Terms decision to retain that person on parole under Section 3001 if that person has not had any mental health treatment required as a condition of parole.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
William K. Stark
Deputy Legislative Counsel

WKS:jm

# FACT SHEET FOR SB 1296 (McCORQUODALE)

## BILL SUMMARY

SB 1296 establishes new procedures for the mental health commitment of certain mentally ill prisoners. The new procedures apply only to individuals who:

1. Have been imprisoned for the commission of a crime of violence.
2. Have a serious mental illness associated with the crime for which they were sent to prison.
3. Have been treated for their mental disorder in prison.
4. Have been determined by mental health professionals that their mental disorder is not in remission or cannot be kept in remission.

As a condition of parole, individuals meeting the above criteria may be required to be treated by the State mental health system on an inpatient or outpatient basis.

At the end of the parole period, the district attorney may petition the superior court to extend involuntary treatment for a one-year period. The trial in superior court shall be by jury unless waived by both sides. There is no limit on the number of times an individual can be recommitted.

## BACKGROUND

1. There are approximately 1200 inmates in the State prison system who are currently receiving treatment for a mental disorder.

2. It is estimated that there are an additional 3000 prisoners in need of treatment for severe mental disorders.

3. During the first year of SB 1296, approximately 300 prisoners would be committed to involuntary mental health treatment. That number will increase, to perhaps 500 annually, as the Department of Corrections screens prisoners for eligibility under SB 1296.

4. Under existing law, the Director of Corrections may place an inmate in a State hospital pursuant to the Lanterman-Petris-Short (LPS) Act if the prisoner is a danger to himself or others because of a mental disorder. Unfortunately, LPS procedures are

civil, not criminal, and are not intended to address the problem of violent, mentally disordered criminal offenders. (Less than 30 persons were committed last year under LPS criteria).

5. Examples of individuals who would be affected by SB 1296:

Mr. M killed his former wife's boyfriend. He was convicted of second degree murder when the penalty for such an offense was a determinate sentence. He has an acute paranoid disorder. This mental illness was a factor in the rage which led to the murder. His disorder is not in remission. He has threatened to kill his former wife.

When SB 1296 becomes operative, Mr. M would be placed in a State hospital for treatment as a condition of parole; and that treatment continues after parole if his mental illness is not in remission or cannot be kept in remission.

Mr. A attempted to kill actress Teresa Saldana. He has been diagnosed as having a severe mental disorder. This disorder was a factor in the crime for which he has been sentenced. He is being treated in prison. On his parole date, if the mental disorder is not in remission or, according to mental health professionals, cannot be kept in remission, he could be committed to a State hospital rather than being released.

BHonorable Dan McCorquodale
Member of the Senate
State Capitol, Room 4032
Sacramento, CA 95814

| DEPARTMENT | AUTHOR | BILL NUMBER |
|---|---|---|
| Finance | McCorquodale<br>Presley | SB 1296 |
| SPONSORED BY | RELATED BILLS | DATE LAST AMENDED |
| | SB 1054 | June 25, 1985 |

Senator
L__r ~~Assemblyman~~ McCorquodale:

Our office has reviewed AB 1296, and on the basis of our analysis of available information, we regret that we must oppose your legislation. If you feel that we may have overlooked factors that may be important in evaluating your legislation, please do not hesitate to contact Clifford L. Allenby (445-3936) and he will arrange any assistance necessary.

BILL SUMMARY

This bill would provide for the involuntary commitment of inmates as a condition of parole when a prisoner has a mental disorder which is not in remission or cannot be kept in remission. This is necessary in order to protect the public from such persons.

SUMMARY OF CHANGES

This version of the bill makes the following changes from the previous analysis of April 18, 1985.

The 6/25/85 amendments primarily redefine the condition by which inmates and parolees would be placed within the involuntary treatment program to include only those with "severe" mental disorders. This amendment could substantially reduce the effectiveness of this bill in prohibiting the release of potentially violent inmates and parolees. The 8/26/85 amendments provide that a person must be placed on outpatient

SUMMARY OF OPPOSITION under certain conditions. These conditions are such that the bill would capture few more people than As amended, SB 1296 may have little or no impact upon public safety due to the restrictive ~~in~~ inition of state prisoners and parolees who would be eligible for the proposed treatment programs. and ~~Current~~ due to outpatient Standards provisions current LA proceedin

FISCAL SUMMARY--STATE LEVEL

| Department/Agency or Revenue Type | Code | SO LA CO RV | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1985-86 | FC 1986-87 | FC 1987-88 | Code | Fund |
|---|---|---|---|---|---|---|---|
| Corrections | 5240 | SO | ----------Minimal Fiscal Impact---------- | | | 001 | General |

ANALYSIS

A. Specific Findings

Current law provides that the Department of Corrections (CDC), before releasing an inmate who meets the Lanterman-Petris-Short Act involuntary commitment criteria, may place that person in a State Hospital.

| POSITION | Department Director | Date |
|---|---|---|
| Oppose, unless amended to delete ~~6/25/85~~ 8/26/85 amendments ~~which substantially limits the inmate parolee population eligible for the proposed involuntary treatment programs.~~ relating to outpatient Standards. | | |

~~Principal Analyst~~ Date ~~Program Budget Manager~~

BILL ANALYSIS--(continued) Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale/Presley | June 25, 1985 | SB 1296 |

ANALYSIS

Specific Findings (Continued)

This bill would additionally permit the CDC to involuntarily commit inmates to State Hospitals as a condition of parole when the prisoner has:

1) a mental disorder which is not in remission or cannot be kept in remission
2) the mental disorder caused, was one of the causes, or was an aggravating factor in commission of the crime for which the prisoner was sentenced.
3) the prisoner has been in treatment for 90 days or more while in prison
4) certification by Corrections and/or Mental Health that 1) or 2) above exist or that the inmate will not follow appropriate voluntary treatment.
5) committed a crime in which the prisoner used force or violence or caused serious bodily injury

Prisoners meeting these criteria will be committed to the Department of Mental Health for inpatient treatment. If the Department of Mental Health certifies to the Board of Prison Terms that the person will not be a danger to others while on outpatient status then the person may be placed in an involuntary outpatient program.

The due process protections for this involuntary commitment to state hospital is a hearing before the Board of Prison Terms with the burden of proof upon the inmate.

If the person's mental disorder can be kept in remission, then the commitment can be terminated.

If near the end of the person's parole the mental disorder still cannot be kept in remission then the medical director of the state hospital, the county mental health director, or the Director of Correcions must notify the local prosecuting attorney who may petition the court for an additional one year commitment. The court hearing is to be based on the standard of a preponderance of the evidence.

The one year commitment to mental health is renewable by another court hearing.

The costs of treatment are to be a state expense while the person is under the jurisdiction of the Department of Corrections, i.e., a prison inmate or a parolee. After the parole status is over then the person would become the responsibility of the county mental health program.

The duration of parole is to be two years unless the Board of Prison Terms determines for good cause that the person should remain on parole longer.

An additional exception would be made to the statutory requirement that each inmate be paroled to the county from which he was committed. An inmate could be paroled to another county if the necessary outpatient program is unavailable.

The 6/25/85 amendments primarily redefine the condition by which inmates and parolees would be placed within the involuntary treatment program to include only those with "severe" mental disorders. This amendment could substantially reduce the effectiveness of this bill in prohibiting the release of potentially violent inmates and parolees.

H:3874N2

BILL ANALYSIS--(continued) ..... Form DF-43

| AUTHOR | DATE LAST AMENDED | BILL NUMBER |
|---|---|---|
| McCorquodale/Presley | June 25, 1985 | SB 1296 |

ANALYSIS

B. Fiscal Analysis

The Department of Mental Health indicates that information provided by Corrections' Data Analysis Unit indicates that approximately 19,000 prisoners were released to parole during calendar year 1984. According to the Parole and Community Services Division of Correcitons, anywhere from 6 percent to 8 percent of the prisoners released on parole are referred to outpatient psychiatric treatment programs.

Assumptions:

6 percent of the 19,000 parolees are referred to Department of Mental Health for treatment (1,140 parolees).

One-half of the parolees (570) will be placed in inpatient care at the cost of $52,000 per person per year. The other half (570) placed in outpatient care at $12,000 per year.

First year cost would be as follows:

| | | | | |
|---|---|---|---|---|
| Inpatient care | 570 | x $52,000 | = | $29,640,000 |
| Outpatient care | 570 | x $12,000 | = | 6,840,000 |
| TOTAL treatment cost | | | | $36,480,000 |

The Department of Mental Health has indicated that the influx of population which would increase due to the provisions of this bill may create the need to provide for new facilities. At the time of this analysis the cost of such capital outlay was not available, but can be assumed to be quite substantial.

This estimate seems to be extremely large given some of the provisions included in the bill. For example, this bill would only impact those inmates who have received at least 90 days of treatment or the mental disorder must be a cause or an aggravating factor. Many offsets also need to be considered such as the costs already being paid by Corrections for outpatient treatment and length of stay factor for inpatient status. Many other facets impacting the population would tend to reduce these costs projected. An exact estimate is unavailable to be projected however it would still appear that even if the DMH estimate is reduced to 25% or 250 eligible parolees the costs would still be in the major range ($2,500,000).

With the ~~June 25, 1985~~ 8/26/85 amendment the fiscal is expected to be minimal, although the exact amount is unknown at this time.

H: 3874N3

## DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Harrison**
No.: **S199830**

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 that same day in the ordinary course of business.

On May 9, 2012, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Ron Boyer
Attorney at Law
1563 Solano Avenue, #246
Berkeley, CA 94707
Attorney for Appellant

The Honorable Katrina West, Judge
c/o San Bernardino Superior Court Clerk
351 North Arrowhead Drive
San Bernardino, CA 92415

Cameron Page, SDDA
San Bernardino District Attorney's Office
Appellate Services Unit
412 W. Hospitality Lane, First Floor
San Bernardino, CA 92415-0042

Fourth Appellate District
Division Two
Court of Appeal of the State of California
Division Two
3389 Twelfth Street
Riverside, CA 92501

and I furthermore declare, I electronically served a copy of the above document from Office of the Attorney General's electronic notification address ADIEService@doj.ca.gov on May 9, 2012, to Appellate Defenders, Inc.'s electronic notification address eservice-criminal@adi-sandiego.com.

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 May 9, 2012, at San Diego, California.

Carole McGraw
Declarant

Carole McGraw
Signature

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