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**SB-591 Incarcerated persons: mental health evaluations.** (2019-2020)

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**Senate Bill No. 591**

**CHAPTER 649**

An act to amend Section 2962 of the Penal Code, relating to incarcerated persons.

[ Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 591, Galgiani. Incarcerated persons: mental health evaluations.

Existing law requires that, as a condition of parole, a prisoner who has a severe mental health disorder, as defined, be treated by the State Department of State Hospitals. Existing law requires, prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals to have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation.

This bill would require that psychiatrists or psychologists from the State Department of State Hospitals, the Department of Corrections and Rehabilitation, or the Board of Parole Hearings be given access to prisoners being temporarily held at a county correctional facility, a county medical facility, or a state-assigned mental health provider.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 2962 of the Penal Code is amended to read:

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

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

(2) The term "severe mental health disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or that grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental health disorder," as used in this section, does not include a personality or adjustment disorder, epilepsy, intellectual disability or other developmental disabilities, or addiction to or abuse of intoxicating substances.

(3) The term "remission" means a finding that the overt signs and symptoms of the severe mental health disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Parole Hearings or a trial court, the person has been in remission and

has been physically violent, except in self-defense, or has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for their safety or the safety of their immediate family, or the person has intentionally caused property damage, or has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard is whether the person has acted as a reasonable person would in following the treatment plan.

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

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

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental health disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental health disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the prisoner's parole release day, and that by reason of the prisoner's severe mental health disorder the prisoner represents a substantial danger of physical harm to others.

(A) For prisoners being treated by the State Department of State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, and the evaluation shall be conducted at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections and Rehabilitation.

(B) For the evaluation of Department of Corrections and Rehabilitation prisoners who are temporarily housed at a county correctional facility, a county medical facility, or a state-assigned mental health provider, a practicing psychiatrist or psychologist from the State Department of State Hospitals, the Department of Corrections and Rehabilitation, or the Board of Parole Hearings shall be afforded prompt and unimpeded access to the prisoner and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

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

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment, but to determine if the prisoner meets certain criteria to be involuntarily treated as an offender with a mental health disorder. It is not required that the prisoner appreciate or understand that information.

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

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

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

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

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

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

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

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

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

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

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

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 if the act posed a substantial danger of physical harm to others.

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

(N) A violation of Section 18745.

(O) Attempted murder.

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

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

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

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