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AB-1253 Hearsay: exceptions. (2023-2024)

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Assembly Bill No. 1253

CHAPTER 363

An act to add Section 1285 to the Evidence Code, relating to hearsay.

[Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1253, Maienschein. Hearsay: exceptions.

Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a person who was convicted of a sexually violent offense and is in prison or whose parole has been revoked for evaluation by the State Department of State Hospitals to determine whether the person is a sexually violent predator before the person's release from prison. If the State Department of State Hospitals determines that the person is a sexually violent predator, then the Director of State Hospitals must ask the county in which the person was convicted of the offense to file a petition in superior court to involuntarily commit the person to a secure facility for mental health treatment upon the person's release from prison. Upon filing, if a judge determines that this petition, on its face, contains sufficient facts to constitute probable cause to believe that the person is likely to engage in sexually violent predatory criminal behavior upon their release, the judge must order the person to be detained in a secure facility until a probable cause hearing can be completed. If, at this hearing, the judge determines that there is probable cause, the judge must order that the person remain in custody in a secure facility until a trial is completed, and must order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon the person's release from prison.

Existing law defines hearsay as evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated. Except as provided by law, hearsay evidence is inadmissible. Existing case law, as established in *Walker v. Superior Court* (2021) 12 Cal.5th 177, provides that there is no indication the Legislature created an explicit hearsay exception to allow hearsay, in the form of police and probation office reports, to be admitted as evidence in the probable cause hearing described above.

This bill would provide that within an official written report or record of a law enforcement officer regarding a sexual offense that resulted in a person's conviction, the following statements are not inadmissible hearsay at the probable cause hearing described above: (1) a statement from a victim of the sexual offense, (2) a statement from an eyewitness to the sexual offense, or (3) a statement from a sexual assault medical examiner who examined a victim of the sexual offense.

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

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

SECTION 1. Section 1285 is added to the Evidence Code, immediately following Section 1284, to read:

1285. Within an official written report or record of a law enforcement officer regarding a sexual offense that resulted in a person's conviction, the following statements are not made inadmissible by the hearsay rule at the civil hearing described in Section 6602 of the Welfare and Institutions Code when offered to prove the truth of the matter stated:

- (a) A statement from a victim of the sexual offense.
- (b) A statement from an eyewitness to the sexual offense.
- (c) A statement from a sexual assault medical examiner who examined a victim of the sexual offense.