

ASSEMBLY BILL

No. 1237

Introduced by Assembly Member Brown

February 27, 2015

An act to amend Sections 1027 and 1369 of the Penal Code, and to add Section 7233 to the Welfare and Institutions Code, relating to state hospitals.

LEGISLATIVE COUNSEL'S DIGEST

AB 1237, as introduced, Brown. State hospitals: placement evaluations.

Existing law establishes the State Department of State Hospitals for the administration of state hospitals and provides for the involuntary confinement of certain individuals in those state hospitals, including a defendant who has been found mentally incompetent to stand trial or who has been found to be insane at the time he or she committed the crime. Existing law requires a court, when a defendant pleads not guilty by reason of insanity, or if there is a question as to the defendant's mental competence, to appoint a specified number of psychiatrists or psychologists to examine the defendant.

This bill would require the State Department of State Hospitals to establish, within the department, a pool of psychiatrists and psychologists with forensic skills, and would require the department to create evaluation panels from the pool of psychiatrists and psychologists, as specified. The bill would require the court to order an evaluation panel to evaluate a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1027 of the Penal Code is amended to
2 read:
3 1027. (a) When a defendant pleads not guilty by reason of
4 insanity the court shall ~~select and appoint two, and may select and~~
5 ~~appoint three, psychiatrists, or licensed psychologists who have a~~
6 ~~doctoral degree in psychology and at least five years of~~
7 ~~postgraduate experience in the diagnosis and treatment of emotional~~
8 ~~and mental disorders;~~ *appoint an evaluation panel that has been*
9 *convened pursuant to Section 7233 of the Welfare and Institutions*
10 *Code to examine the defendant and investigate his or her mental*
11 *status. It is the duty of the psychiatrists or psychologists selected*
12 ~~and appointed~~ *evaluation panel to make the examination and*
13 *investigation, and to testify, whenever summoned, in any*
14 *proceeding in which the sanity of the defendant is in question. The*
15 ~~psychiatrists or psychologists appointed by the court~~ *members of*
16 *the evaluation panel shall be allowed, in addition to their actual*
17 *traveling expenses, those fees that in the discretion of the court*
18 *seem just and reasonable, having regard to the services rendered*
19 *by the witnesses. The fees allowed shall be paid by the county*
20 *where the indictment was found or in which the defendant was*
21 ~~held for trial:~~ *trial to the State Department of State Hospitals.*
22 (b) Any report on the examination and investigation made
23 pursuant to subdivision (a) shall include, but not be limited to, the
24 psychological history of the defendant, the facts surrounding the
25 commission of the acts forming the basis for the present charge
26 used by the ~~psychiatrist or psychologist~~ *evaluation panel* in making
27 ~~his or her~~ *the panel's* examination of the defendant, the present
28 psychological or psychiatric symptoms of the defendant, if any,
29 the substance abuse history of the defendant, the substance use
30 history of the defendant on the day of the offense, a review of the
31 police report for the offense, and any other credible and relevant
32 material reasonably necessary to describe the facts of the offense.
33 (c) This section does not presume that ~~a psychiatrist or~~
34 ~~psychologist~~ *an evaluation panel* can determine whether a
35 defendant was sane or insane at the time of the alleged offense.

1 This section does not limit a court’s discretion to admit or exclude,
2 pursuant to the Evidence Code, psychiatric or psychological
3 evidence about the defendant’s state of mind or mental or emotional
4 condition at the time of the alleged offense.

5 (d) Nothing contained in this section shall be deemed or
6 construed to prevent any party to any criminal action from
7 producing any other expert evidence with respect to the mental
8 status of the defendant. If expert witnesses are called by the district
9 attorney in the action, they shall only be entitled to those witness
10 fees as may be allowed by the court.

11 (e) ~~Any psychiatrist or psychologist~~ *The members of an*
12 *evaluation panel* appointed by the court may be called by either
13 party to the action or by the court, and shall be subject to all legal
14 objections as to competency and bias and as to qualifications as
15 an expert. When called by the court or by either party to the action,
16 the court may examine the ~~psychiatrist or psychologist~~, *members*
17 *of the evaluation panel*, as deemed necessary, but either party shall
18 have the same right to object to the questions asked by the court
19 and the evidence adduced as though the ~~psychiatrist or psychologist~~
20 *members of the panel* were ~~a witness~~ *witnesses* for the adverse
21 party. When ~~a member of the psychiatrist or psychologist panel~~ is
22 called and examined by the court, the parties may cross-examine
23 him or her in the order directed by the court. When called by either
24 party to the action, the adverse party may examine him or her the
25 same as in the case of any other witness called by the party.

26 SEC. 2. Section 1369 of the Penal Code is amended to read:

27 1369. Except as stated in subdivision (g), a trial by court or
28 jury of the question of mental competence shall proceed in the
29 following order:

30 (a) The court shall appoint ~~a psychiatrist or licensed~~
31 ~~psychologist~~, *an evaluation panel that has been convened pursuant*
32 *to Section 7233 of the Welfare and Institutions Code*, and any other
33 expert *with forensic experience* the court may deem appropriate,
34 to examine the defendant. In any case ~~where in which~~ the defendant
35 or the defendant’s counsel informs the court that the defendant is
36 not seeking a finding of mental incompetence, ~~the court shall~~
37 ~~appoint two psychiatrists, licensed psychologists, or a combination~~
38 ~~thereof. One of the psychiatrists or licensed psychologists may be~~
39 ~~named by the defense and one may be named by the prosecution.~~
40 *defense and the prosecution shall each confer with the State*

1 *Department of State Hospitals regarding the selection of the*
2 *panelists.* The examining ~~psychiatrists or licensed psychologists~~
3 *panelists* shall evaluate the nature of the defendant's mental
4 disorder, if any, the defendant's ability or inability to understand
5 the nature of the criminal proceedings or assist counsel in the
6 conduct of a defense in a rational manner as a result of a mental
7 disorder and, if within the scope of their licenses and appropriate
8 to their opinions, whether or not treatment with antipsychotic
9 medication is medically appropriate for the defendant and whether
10 antipsychotic medication is likely to restore the defendant to mental
11 competence. If an examining ~~psychologist~~ *panelist* is of the opinion
12 that antipsychotic medication may be medically appropriate for
13 the defendant and that the defendant should be evaluated by a
14 psychiatrist to determine if antipsychotic medication is medically
15 appropriate, the ~~psychologist~~ *panelist* shall inform the court of this
16 opinion and his or her recommendation as to whether a psychiatrist
17 should examine the defendant. The examining ~~psychiatrists or~~
18 ~~licensed psychologists~~ *panelists* shall also address the issues of
19 whether the defendant has capacity to make decisions regarding
20 antipsychotic medication and whether the defendant is a danger
21 to self or others. If the defendant is examined by a psychiatrist and
22 the psychiatrist forms an opinion as to whether or not treatment
23 with antipsychotic medication is medically appropriate, the
24 psychiatrist shall inform the court of his or her opinions as to the
25 likely or potential side effects of the medication, the expected
26 efficacy of the medication, possible alternative treatments, and
27 whether it is medically appropriate to administer antipsychotic
28 medication in the county jail. If it is suspected the defendant is
29 developmentally disabled, the court shall appoint the director of
30 the regional center for the developmentally disabled established
31 under Division 4.5 (commencing with Section 4500) of the Welfare
32 and Institutions Code, or the designee of the director, to examine
33 the defendant. The court may order the developmentally disabled
34 defendant to be confined for examination in a residential facility
35 or state hospital.

36 The regional center director shall recommend to the court a
37 suitable residential facility or state hospital. Prior to issuing an
38 order pursuant to this section, the court shall consider the
39 recommendation of the regional center director. While the person

1 is confined pursuant to order of the court under this section, he or
2 she shall be provided with necessary care and treatment.

3 (b) (1) The counsel for the defendant shall offer evidence in
4 support of the allegation of mental incompetence.

5 (2) If the defense declines to offer any evidence in support of
6 the allegation of mental incompetence, the prosecution may do so.

7 (c) The prosecution shall present its case regarding the issue of
8 the defendant's present mental competence.

9 (d) Each party may offer rebutting testimony, unless the court,
10 for good reason in furtherance of justice, also permits other
11 evidence in support of the original contention.

12 (e) When the evidence is concluded, unless the case is submitted
13 without final argument, the prosecution shall make its final
14 argument and the defense shall conclude with its final argument
15 to the court or jury.

16 (f) In a jury trial, the court shall charge the jury, instructing
17 them on all matters of law necessary for the rendering of a verdict.
18 It shall be presumed that the defendant is mentally competent
19 unless it is proved by a preponderance of the evidence that the
20 defendant is mentally incompetent. The verdict of the jury shall
21 be unanimous.

22 (g) Only a court trial is required to determine competency in
23 any proceeding for a violation of probation, mandatory supervision,
24 postrelease community supervision, or parole.

25 SEC. 3. Section 7233 is added to the Welfare and Institutions
26 Code, to read:

27 7233. (a) The State Department of State Hospitals shall
28 establish a pool of psychiatrists and psychologists with forensic
29 skills who are employees of the department from which evaluation
30 panels shall be created pursuant to subdivision (b).

31 (b) The department shall create evaluation panels with each
32 panel consisting of three to five forensic psychiatrists or
33 psychologists from the pool created in subdivision (a).