

Assembly Bill No. 720

CHAPTER 347

An act to amend, repeal, and add Section 2603 of the Penal Code, relating to county jail inmates.

[Approved by Governor September 28, 2017. Filed with Secretary of State September 28, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 720, Eggman. Inmates: psychiatric medication: informed consent. Existing law prohibits, except as specified, a person sentenced to imprisonment in a county jail from being administered any psychiatric medication without his or her prior informed consent. Existing law authorizes a county department of mental health, or other designated county department, to administer to an inmate involuntary medication on a nonemergency basis only after the inmate is provided, among other things, a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer.

This bill would extend to an inmate confined in a county jail the protection from being administered any psychiatric medication without his or her prior informed consent, with certain exceptions. The bill would impose additional criteria that must be satisfied before a county department of mental health or other designated county department may administer involuntary medication. This criteria include that the jail first make a documented attempt to locate an available bed for the inmate in a community-based treatment facility, under certain conditions, in lieu of seeking involuntary administration of psychiatric medication, and, if the inmate is awaiting resolution of a criminal case, that a hearing to administer involuntary medication on a nonemergency basis be held before, and any requests for ex parte orders be submitted to, a judge in the superior court where the criminal case is pending. The bill would also set limits on the amount of time such orders are valid. The bill would require any court-ordered psychiatric medication to be administered in consultation with a psychiatrist who is not involved in the treatment of the inmate at the jail, if one is available. The bill would also make a clarifying change.

The bill would require a county that administers involuntary psychiatric medication to file a report with prescribed information to certain committees of the Legislature, as specified.

The bill would repeal its provisions on January 1, 2022.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The large number of persons with mental health disabilities in California jails is a matter of serious concern that merits the attention of policymakers. Expert consensus identifies insufficient community mental health treatment resources, including inpatient psychiatric beds to treat individuals in psychiatric crisis, available housing, and outpatient treatment options, as primary contributing causes.

(b) A State Department of Health Care Services fiscal year 2014–15 report indicated that jails in the state provided mental health outpatient services to 103,490 persons detained in jail facilities.

(c) Jails are not therapeutic environments and were not intended or designed to be mental health facilities.

(d) It is the policy of the State of California to prevent persons with mental health disabilities from inappropriate involvement with the criminal justice system. As part of an effort to decriminalize the treatment of persons with mental health disabilities, individuals should be treated whenever and wherever possible in community treatment settings and not in jails.

(e) The Sequential Intercept Model is a comprehensive effort to divert such persons with mental health disabilities from criminal justice involvement and reduce the criminalization of persons with a mental illness. The model is endorsed by the Substance Abuse and Mental Health Services Administration, the Justice Center for the Council of State Governments, the National Association of Counties, and the American Psychiatric Association. The model identifies five intercepts:

(1) Provide training for first responders to provide more therapeutic and effective responses in mental health emergencies and information about community treatment programs that may be appropriate for the individual.

(2) Reduce the number of persons with mental health disabilities booked into jail by offering diversion programs with mental health services when appropriate.

- (3) Reduce the length of time persons with mental health disabilities remain in jail, and assure that appropriate treatment is available to them while in jail.
- (4) Develop reentry programs which work with the inmate prior to release for success in the community and to provide safe handoffs and connections to community-based mental health programs.
- (5) Reduce recidivism by providing high quality community corrections programs and linkages to community programs designed for the mental health needs of the released inmate.
- (f) This act provides county jails with the authority to administer involuntary psychotropic medications to inmates awaiting arraignment, trial, and sentencing, and seeks to decrease the duration of untreated illness within a jail setting consistent with the third intercept.
- (g) It is the intent of the Legislature that jails should also provide discharged inmates with adequate discharge plans upon their release from jail in order to obtain community-based support and services while maintaining needed therapeutic treatment, including, but not limited to, the following:
- (1) Providing inmates with mental health disabilities with a discharge plan that is reasonably calculated to give them meaningful access to essential medical and mental health services upon their release.
- (2) Ensuring that all people with mental health disabilities can benefit from such a plan.
- (3) Ensuring that released prisoners with mental health disabilities are offered placement in the least restrictive postrelease environment that is clinically appropriate.

SEC. 2. Section 2603 of the Penal Code is amended to read:

2603. (a) Except as provided in subdivision (b), an inmate confined in a county jail shall not be administered any psychiatric medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d).

(c) A county department of mental health, or other designated county department, may administer involuntary medication on a nonemergency basis only if all of the following conditions have been met:

(1) A psychiatrist or psychologist has determined that the inmate has a serious mental disorder.

(2) A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others.

(3) A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient.

(4) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication.

(5) The jail has made a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities.

(6) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified in subdivision (c) of Section 5334 of the Welfare and Institutions Code.

(A) If the inmate is in custody awaiting trial, any hearing pursuant to this section shall be held before, and any requests for ex parte orders shall be submitted to, a judge in the superior court where the criminal case is pending.

(B) A superior court judge may consider whether involuntary medication would prejudice the inmate's defense.

(7) (A) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to

subdivision (d), in which case the inmate would receive expedited access to counsel.

(B) In the case of an inmate awaiting arraignment, the inmate is provided counsel within 48 hours of the filing of the notice of the hearing with the superior court, unless counsel has previously been appointed.

(C) The hearing shall be held not more than 30 days after the filing of the notice with the superior court, unless counsel for the inmate agrees to extend the date of the hearing.

(8) (A) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive an expedited hearing.

(B) The written notice shall do all of the following:

(i) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication.

(ii) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to medical treatment.

(iii) Inform the inmate of his or her right to appeal the determination to the superior court or the court of appeal as specified in subdivisions (e) and (f) of Section 5334 of the Welfare and Institutions Code, and his or her right to file a petition for writ of habeas corpus with respect to any decision of the county department of mental health, or other designated county department, to continue treatment with involuntary medication after the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer has authorized treatment with involuntary medication.

(9) (A) In the hearing described in paragraph (6), the superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric

medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest.

(B) The superior court judge, court-appointed commissioner or referee, or a court-appointed hearing officer shall not make a finding pursuant to subparagraph (A) of this paragraph that there is no less intrusive alternative to involuntary medication and that the medication is in the inmate's best medical interest, without information from the jail to indicate that neither of the conditions specified in paragraph (5) is present.

(C) If the court makes the findings in subparagraph (A), that administration shall occur in consultation with a psychiatrist who is not involved in the treatment of the inmate at the jail, if available.

(D) In the event of any statutory notice issues with either initial or renewal filings by the county department of mental health, or other designated county department, the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall hear arguments as to why the case should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and, if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

(10) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(11) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. This paragraph does not prevent a court from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial, if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.

(d) (1) (A) This section does not prohibit a physician from taking appropriate action in an emergency. An emergency exists when both of the following criteria are met:

(i) There is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others.

(ii) It is impractical, due to the seriousness of the emergency, to first obtain informed consent.

(B) If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist.

(2) (A) If the clinicians of the county department of mental health, or other designated county department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing, and filing an ex parte order within the initial 72-hour period. Treatment of the inmate in a facility pursuant to Section 4011.6 shall not be required in order to continue medication under this subdivision unless the treatment is otherwise medically necessary.

(B) The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c).

(C) The order may be issued ex parte upon a showing that, in the absence of the medication, the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist or psychologist showing specific facts.

(D) The inmate and the inmate's appointed counsel shall have two business days to respond to the county department's ex parte request to continue interim medication, and may present facts supported by an affidavit in opposition to the department's request. A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order.

(E) If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (6) of subdivision (c) is held.

(3) If the county elects to seek an ex parte order pursuant to this subdivision, the county department of mental health, or other designated county department, shall file with the superior court, and serve on the inmate and his or her counsel, the written notice described in paragraph (8) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

(B) A psychiatrist determines that the psychiatric medication is not necessary and administration of the medication is discontinued.

(4) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (6) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for the inmate agrees to a different period of time.

(5) With the exception of the timeline provisions specified in paragraphs (3) and (4) for providing notice and commencement of the hearing in emergency or interim situations, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The county department of mental health, or other designated county department, shall prove the same elements supporting the involuntary administration of psychiatric medication and the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall be required to make the same findings described in subdivision (c).

(e) (1) (A) An order by the court authorizing involuntary medication of an inmate shall be valid for no more than one year after the date of determination.

(B) Notwithstanding subparagraph (A), in the case of an inmate who is awaiting arraignment, trial, or sentencing, the determination that an inmate may receive involuntary medication shall be valid for no more than 180 days. The court shall review the order at intervals of not more than 60 days to determine whether the grounds for the order remain. At each review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the defendant and the defendant's attorney. In determining whether the criteria for involuntary

medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order.

(2) Notwithstanding subparagraph (A) of paragraph (1), any determination of an inmate's incapacity to refuse treatment with antipsychotic medication made pursuant to this section shall remain in effect only until one of the following occurs, whichever occurs first:

(A) The duration of the inmate's confinement ends.

(B) A court determines that the inmate no longer meets the criteria of subdivision (c) or (d), or by any other order of the court.

(3) An inmate's period of confinement may not be extended in order to provide treatment to the inmate with antipsychotic medication pursuant to this section.

(f) This section does not prohibit the court, upon making a determination that an inmate awaiting arraignment, preliminary hearing, trial, sentencing, or a postconviction proceeding to revoke or modify supervision may receive involuntary medication pursuant to subdivision (c) or (d), and, upon ex parte request of the defendant or counsel, from suspending all proceedings in the criminal prosecution, until the court determines that the defendant's medication will not interfere with his or her ability to meaningfully participate in the criminal proceedings.

(g) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (h).

(h) To renew an existing order allowing involuntary medication, the county department of mental health, or other designated county department, shall file with the superior court, and shall serve on the inmate and his or her counsel, a written notice indicating the department's intent to renew the existing involuntary medication order.

(1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

(2) The inmate shall be entitled to, and shall be given, the same due process protections as specified in subdivision (c).

(3) (A) Except as provided in subparagraph (B), renewal orders shall be valid for one year from the date of the hearing.

(B) In the case of an inmate awaiting arraignment, trial, or sentencing, the renewal order shall be valid for no more than 180 days. The court shall review the order at intervals of not more than 60 days to determine whether the grounds for the order remain. At each review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the defendant and the defendant's attorney. In determining whether the criteria for involuntary medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order.

(4) (A) An order renewing an existing order shall be granted based on clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication, and that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

(B) The superior court judge, court-appointed commissioner or referee, or a court-appointed hearing officer shall also make a finding that treatment of the inmate in a correctional setting continues to be necessary if neither of the criteria in paragraph (5) of subdivision (c) is present.

(5) If the county department of mental health, or other designated county department, wishes to add a basis to an existing order, it shall give the inmate and the inmate's counsel notice in advance of the hearing via a renewal notice or supplemental petition. Within the renewal notice or supplemental petition, as described in subdivision (h), the county department of mental health, or other

designated county department, shall specify what additional basis is being alleged and what qualifying conduct within the past year supports that additional basis. The county department of mental health, or other designated county department, shall prove the additional basis and conduct by clear and convincing evidence at a hearing as specified in subdivision (c).

(6) The hearing on any petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(i) In the event of a conflict between the provisions of this section and the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code), this section shall control.

(j) As used in this section, “inmate” means a person confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, and a person who has been booked into a county jail and is awaiting arraignment.

(k) This section does not apply to a person housed in a county jail solely on the basis of an immigration hold, except as it applies to medication provided on an emergency or interim basis as provided in subdivision (d).

(l) Each county that administers involuntary medication to an inmate awaiting arraignment, trial, or sentencing, shall file, by January 1, 2021, a written report with the Assembly Committees on Judiciary and Public Safety and the Senate Committee on Public Safety summarizing the following: the number of inmates who received involuntary medication while awaiting arraignment, trial, or sentencing between January 1, 2018, and July 1, 2020; the crime for which those inmates were arrested; the total time those inmates were detained while awaiting arraignment, trial, or sentencing; the duration of the administration of involuntary medication; the reason for termination of administration of involuntary medication; the number of times, if any, that an existing order for the administration of involuntary medication was renewed; and the reason for termination of the administration of involuntary medication.

(m) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 3. Section 2603 is added to the Penal Code, to read:

2603. (a) Except as provided in subdivision (b), no person sentenced to imprisonment in a county jail shall be administered any psychiatric medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d).

(c) A county department of mental health, or other designated county department, may seek to initiate involuntary medication on a nonemergency basis only if all of the following conditions have been met:

(1) A psychiatrist or psychologist has determined that the inmate has a serious mental disorder.

(2) A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others.

(3) A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient.

(4) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication, and refuses, or is unable to consent to, the administration of the medication.

(5) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified in subdivision (c) of Section 5334 of the Welfare and Institutions Code.

(6) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive expedited access to counsel. The hearing shall be held not more than 30 days after the filing of the notice with the superior court, unless counsel for the inmate agrees to extend the date of the hearing.

(7) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive an expedited hearing. The written notice shall do all of the following:

(A) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication.

(B) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to medical treatment.

(C) Inform the inmate of his or her right to appeal the determination to the superior court or the court of appeal as specified in subdivisions (e) and (f) of Section 5334 of the Welfare and Institutions Code, and of his or her right to file a petition for writ of habeas corpus with respect to any decision of the county department of mental health, or other designated county department, to continue treatment with involuntary medication after the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer has authorized treatment with involuntary medication.

(8) A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest. In the event of any statutory notice issues with either initial or renewal filings by the county department of mental health, or other designated county department, the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall hear arguments as to why the case should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and, if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

(9) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(10) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown.

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. If the clinicians of the county department of mental health, or other designated county department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. Treatment of the inmate in a facility pursuant to Section 4011.6 shall not be required in order to continue medication under this subdivision unless the treatment is otherwise medically necessary. The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c). The order may be issued ex parte upon a showing that, in the absence of the medication, the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist or psychologist showing specific facts. The inmate and the inmate's appointed counsel shall have two business days to respond to the county department's ex parte request to continue interim medication, and may present facts supported by an affidavit in opposition to the department's request. A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.

(1) If the county elects to seek an ex parte order pursuant to this subdivision, the county department of mental health, or other designated county department, shall file with the superior court, and serve on the inmate and his

or her counsel, the written notice described in paragraph (7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

- (A) The inmate gives informed consent to continue the medication.
 - (B) A psychiatrist determines that the psychiatric medication is not necessary and administration of the medication is discontinued.
- (2) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (5) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for the inmate agrees to a different period of time.
- (3) With the exception of the timeline provisions specified in paragraphs (1) and (2) for providing notice and commencement of the hearing in emergency or interim situations, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The county department of mental health, or other designated county department, shall prove the same elements supporting the involuntary administration of psychiatric medication, and the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall be required to make the same findings described in subdivision (c).
- (e) The determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent.
- (f) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (g).
- (g) To renew an existing order allowing involuntary medication, the county department of mental health, or other designated county department, shall file with the superior court, and shall serve on the inmate and his or her counsel, a written notice indicating the department's intent to renew the existing involuntary medication order.
- (1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

- (2) The inmate shall be entitled to, and shall be given, the same due process protections as specified in subdivision (c).
- (3) Renewal orders shall be valid for one year from the date of the hearing.
- (4) An order renewing an existing order shall be granted based on clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication, and that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.
- (5) If the county department of mental health, or other designated county department, wishes to add a basis to an existing order, it shall give the inmate and the inmate's counsel notice in advance of the hearing via a renewal notice or supplemental petition. Within the renewal notice or supplemental petition, as described in subdivision (g), the county department of mental health, or other designated county department, shall specify what additional basis is being alleged and what qualifying conduct within the past year supports that additional basis. The county department of mental health, or other designated county department, shall prove the additional basis and conduct by clear and convincing evidence at a hearing as specified in subdivision (c).
- (6) The hearing on any petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.
- (h) In the event of a conflict between the provisions of this section and the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code), this section shall control.
- (i) This section shall become effective on January 1, 2022.