

THIRD READING

---

Bill No: SB 1401  
Author: Stern (D)  
Introduced: 2/20/26  
Vote: 21

---

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 4/14/26  
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/14/26  
AYES: Cervantes, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

---

**SUBJECT:** Criminal procedure: competence to stand trial

**SOURCE:** Family Advocates for Individuals With Serious Mental Illness of Sacramento

---

**DIGEST:** This bill 1) specifies timeframes for the dismissal of felony charges for a defendant who is incompetent to stand trial (IST) and referred to one of several specified programs; 2) authorizes a county behavioral health agency and jail medical provider to share confidential medical records and other relevant information with the court for the purpose of determining the likelihood of eligibility for behavioral health services and programs; and 3) allows the court to refer a misdemeanor IST defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings if in its opinion the defendant appears to be gravely disabled.

**ANALYSIS:**

Existing law:

- 1) Requires, if during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, the judge to state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally

competent. Requires the court, at the request of the defendant or defendant's counsel or upon its own motion, to recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time. (Penal (Pen.) Code, § 1368, subd. (a).)

- 2) Requires the court, if counsel informs the court that they believe the defendant is or may be mentally incompetent, to order that the question of the defendant's mental competence is to be determined. Authorizes the court, if counsel informs the court that they believe the defendant is mentally competent, to order a determination by the court of the defendant's mental competence. (Pen. Code, § 1368, subd. (b).)
- 3) Requires all proceedings in the criminal prosecution to be suspended when an inquiry into the present mental competence of the defendant has been commenced by the court until the question of the present mental competence of the defendant has been determined, except as provided. (Pen. Code, § 1368, subd. (c).)
- 4) Outlines the process by which the question of mental competence must proceed. (Pen. Code, § 1369.)
- 5) Provides that Section 1370 applies to a person who is charged with a felony or alleged to have violated the terms of probation for a felony or mandatory supervision and is incompetent as a result of a mental health disorder. Provides that Section 1370.01 applies to a person who is charged with a misdemeanor or misdemeanors only, or a violation of formal or informal probation for a misdemeanor, and the judge finds reason to believe that the defendant has a mental health disorder, and may, as a result of the mental health disorder, be incompetent to stand trial. (Pen. Code, § 1367, subd. (b).)
- 6) Requires the criminal process to resume, the trial on the offense charged or hearing on the alleged violation to proceed, and judgment to be pronounced if the defendant is found mentally competent. (Pen. Code, § 1370, (a)(1)(A).)
- 7) Requires the trial, the hearing on the alleged violation, or the judgment to be suspended, if the defendant is found mentally incompetent (and is not charged with an offense that would make the defendant ineligible for mental health diversion). Requires the court to do all of the following:

- a) Determine whether restoring the person to mental competence is in the interests of justice.
  - b) If restoring the person to mental competence is in the interests of justice, the court must state its reasons orally on the record and the case shall proceed, as provided.
  - c) If restoring the person to mental competence is not in the interests of justice, the court must conduct a mental health diversion hearing, and, if the court deems the defendant eligible, grant diversion for a period not to exceed two years from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter. (Pen. Code, § 1370.01, subd. (a)(1)(B)(i)-(iii).)
- 8) Defines “gravely disabled” to mean any of the following:
- a) A condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care.
  - b) A condition in which a person has been found IST under Penal Code section 1370 and all of the following facts exist: the complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person; there has been a finding of probable cause on a complaint, a preliminary examination, or a grand jury indictment, and the complaint, indictment, or information has not been dismissed; as a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against them and to assist counsel in the conduct of their defense in a rational manner; and the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder. (Welf. & Inst. Code, § 5008, subd. (h)(1).)
- 9) Requires the criminal process to resume, and the trial on the offense charged or hearing on the alleged violation to proceed if the defendant charged with a misdemeanor is found mentally competent. (Pen. Code, § 1370.01, subd. (a)(1)(A).)
- 10) Requires, if the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation to be suspended and the court to, after notice to

the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do one or more of the following:

- a) Conduct a hearing, and, if the court deems the defendant eligible and suitable, grant mental health diversion for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.
  - b) Refer the defendant to the CARE Act court, if the defendant or counsel for the defendant agrees to the referral and the court has reason to believe that the defendant may be eligible for the CARE program. If the defendant is accepted into the CARE program, the CARE Act court must notify the criminal court of the acceptance, and the charges must be dismissed six months after the date of the referral to the CARE program, unless the defendant's case has been referred back to the court prior to the expiration of that six-month time period. If the defendant is not accepted into the CARE program or if the CARE Act court refers the defendant back to criminal court before the expiration of the six-month time period, the court shall grant mental health diversion if the defendant is eligible and suitable. (Pen. Code, § 1370.01, subd. (b).)
- 11) Requires the court, if it finds the defendant ineligible or unsuitable for mental health diversion after notice to the defendant, defense counsel, and the prosecution, to hold a hearing to determine which one of the following actions the court will take:
- a) Order modification of an existing mental health diversion treatment plan in accordance with a recommendation from the treatment provider.
  - b) Refer the defendant to assisted outpatient treatment.
  - c) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings. Provides that a defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined.
  - d) Refer the defendant to the CARE Act court.
  - e) If the defendant does not qualify for any of the above services, dismiss the charges. (Pen. Code, § 1370.01, subd. (c).)

- 12) States that it is the intent of the Legislature that a misdemeanor IST defendant receive mental health treatment in a treatment facility and not a jail. (Pen. Code, § 1370.01, subd. (d).)
- 13) Authorizes the county behavioral health agency and jail medical providers to share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining likelihood of eligibility for behavioral health services and programs pursuant to this section. Specifies that the disclosure of information is subject to applicable state and federal privacy laws. (Pen. Code, § 1370.01, subd. (e).)
- 14) States it is the intent of the Legislature that the court consider all treatment options as provided in this section prior to dismissing criminal charges. Specifies that nothing in Section 1370.01 limits a court's discretion to dismiss charges pursuant to Section 1385. (Pen. Code, § 1370.01, subd. (g).)

This bill:

- 1) Makes changes to the provisions of law that pertain to felony defendants who are IST and ineligible for mental health diversion.
- 2) Requires, for a defendant referred to assisted outpatient treatment, that the charges are dismissed six months after the date of the referral to assisted outpatient treatment, unless the defendant's case is referred back to the court before the expiration of that time period. Specifies that this does not alter the confidential nature of assisted outpatient treatment.
- 3) Requires, for a defendant referred to the county conservatorship investigator, that if the conservatorship proceedings result in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges are dismissed 90 days after the date of the filing of the petition, unless the case is referred back to the court before the expiration of that time period. Specifies that this does not alter the confidential nature of conservatorship proceedings.
- 4) Requires, for a defendant referred to CARE court and accepted into the CARE program, the CARE Act court must notify the criminal court of the acceptance, and the charges are dismissed six months after the date of the referral to the CARE program, unless the case is referred back to the court before the

expiration of that time period. Specifies that this does not alter the confidential nature of CARE program proceedings, except as otherwise provided.

- 5) Authorizes a county behavioral health agency and jail medical provider to share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining the likelihood of eligibility for behavioral health services and programs. Provides that the disclosure of information is subject to applicable state and federal privacy laws.
- 6) Allows for a misdemeanor IST defendant, the court to refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings if in its opinion the defendant appears to be gravely disabled, as defined.

## **Background**

Both Penal Code sections 1370 (felony IST) and 1370.01 (misdemeanor IST) require the dismissal of charges if the defendant is referred and accepted to assisted outpatient treatment (AOT) or CARE court, or placed under conservatorship. While Penal Code section 1370.01 specifies the timeframe for the dismissal of charges to occur (e.g., 6 months after the date of referral to AOT, 90 days after the date of the filing of the petition for the establishment of conservatorship, etc.), Penal Code section 1370 does not explicitly state the timelines for the dismissal of charges. This bill addresses that by amending Penal Code section 1370 to include the same timelines for dismissals as contained in Section 1307.01.

This bill also amends Penal Code section 1370 to allow a county behavioral health agency and jail medical provider to share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining the likelihood of eligibility for behavioral health services and programs. This language is codified in Penal Code section 1370.01.

Finally, this bill allows the court to refer a misdemeanor IST defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings if in its opinion the defendant appears to be gravely disabled. This language mirrors language in Penal Code section 1370 that authorizes the court to make the referral.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

This bill will have moderate to significant cost pressure on the trial courts up to \$600,000 annually. There would be calendaring cost pressures from felony IST cases referred back to court, which would then require additional hearings.

Hearing workload costs are difficult to estimate as the courts are not funded based on workload but instead funded largely based on judicial positions and needed staff, which may include additional security costs for IST cases. Estimating anticipated populations is difficult, as well. This analysis estimates that up to 700 felony IST cases statewide may come back to the courts though these cases are not expected to be lengthy. Court costs are based on an hourly rate of \$1,300 (this rate does not include clerk and staff time outside of the hearing time).

**SUPPORT:** (Verified 5/14/26)

Family Advocates for Individuals With Serious Mental Illness  
of Sacramento (source)  
California District Attorneys Association  
California State Association of Psychiatrists  
National Alliance on Mental Illness- California  
Riverside County District Attorney

**OPPOSITION:** (Verified 5/14/26)

ACLU California Action  
Disability Rights California  
Los Angeles County Public Defender's Union, Local 148

**ARGUMENT IN SUPPORT:** According to the California State Association of Psychiatrists:

SB 1401... would align procedures for individuals found incompetent to stand trial (IST) across misdemeanor and felony cases to ensure more consistent and effective pathways to treatment.

Under current law, key procedural elements ... are not aligned between misdemeanor and felony IST cases.

These inconsistencies can delay referrals to appropriate treatment options, including conservatorship, CARE Court, and Assisted Outpatient Treatment, and can limit the court's ability to make timely and informed decisions about patient care.

SB 1401 addresses these gaps by aligning timeframes for dismissal and authorizing appropriate information sharing between behavioral health providers and the court to support determinations of eligibility for treatment programs. ... By creating greater consistency across case types, SB 1401 improves coordination between the courts and behavioral health systems and helps ensure individuals are connected to appropriate care in a timely manner.

**ARGUMENT IN OPPOSITION:** Disability Rights California writes:

...SB 1401... would interfere with the patient-therapist relationship and consequently threaten the effectiveness of mental health treatment, raise significant due process concerns, and disproportionately harm people of color, all without advancing public safety.

SB 1401 would authorize medical providers to share "confidential medical records" and other information "including, but not limited to, prior interactions with and treatment of the defendant" with courts, which would threaten the effectiveness of our entire mental health system. ...

This bill would allow a court to bypass essential due process safeguards in conservatorship proceedings. Specifically, the bill would permit a criminal judge, rather than a person with a mental health license, to refer someone to conservatorship proceedings....

This change would increase the number of people who may initiate conservatorship investigations, subsequently increasing the volume and risk of inappropriate conservatorships. ...

Prepared by: Stephanie Jordan / PUB. S. /  
5/14/26 16:58:03

\*\*\*\* END \*\*\*\*