Date of Hearing: June 23, 2026
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 1401 (Stern) – As Introduced February 20, 2026

As Proposed to be Amended in Committee

SUMMARY: Changes the timeframe for the dismissal of felony charges for a defendant who is incompetent to stand trial (IST) and referred to one of the specified programs after being found ineligible or unsuitable for mental health diversion; and makes other changes to the IST statutes. Specifically, **this bill**:

1) Delays dismissal of felony charges for an IST defendant who is referred to the specified programs after being found ineligible or unsuitable for mental health diversion as follows:

    a) If a defendant is accepted into assisted outpatient treatment (AOT), the court shall dismiss the charges six months after the date of referral to AOT, unless the defendant's case is referred back to court before the expiration of that time period.

    b) If the defendant is referred to the county conservatorship and the conservatorship proceedings result in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges shall be 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 or the basis for the petition is that the defendant is gravely disabled, as defined.

    c) If the defendant is referred and accepted into the Community Assistance, Recovery and Empowerment (CARE) Court program, the charges shall be 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.

2) States that these provisions do not alter the confidential nature of AOT, conservatorship or CARE program proceedings.

3) Authorizes a county behavioral health agency or its designee to report to the court regarding relevant medical information, including but not limited to, prior treatment interactions with the defendant, for the purpose of determining eligibility for behavioral health services and prohibits the use of this information for any other purpose.

4) Requires the above information provided to the court to be kept confidential and after the disposition of the case placed under seal and not be subject to disclosure to any person or entity.

5) Makes conforming changes in the misdemeanor IST statute regarding sharing of confidential information with the court for purposes of determining eligibility for behavioral health services.

6) Allows a referral for county conservatorship for a misdemeanor IST defendant if, in the opinion of the court, the defendant appears to be gravely disabled, as defined.

EXISTING LAW:

1) States that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

2) Requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing to determine whether the defendant is IST. (Pen. Code, § 1368, subd. (b).)

3) Provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code, § 1368, subd. (c).)

4) Specifies how the trial on the issue of mental competency shall proceed. (Pen. Code, § 1369.)

5) Requires the court to suspend criminal proceedings and appoint a psychiatrist or licensed psychologist to examine the defendant. (Pen. Code, § 1369, subd. (a)(1).)

6) Provides that if the defendant or defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall, upon request of defense counsel, appoint two licensed psychologists or psychiatrists, one to be named by the defense and one to be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

7) Requires a licensed psychologist or psychiatrist to evaluate the defendant and submit a written report to the court. The report shall include the opinion of the expert regarding all of the following matters:

   a) A diagnosis of the defendant's mental condition, if any.

   b) Whether the defendant, as a result of a mental disorder or developmental disability, is able to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

   c) Whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future, with consideration as to whether the defendant would attain competency in response to treatment with antipsychotic medication.

   d) If requested by the defense, an opinion as to whether the defendant is eligible for mental health diversion. (Pen. Code, §1369, subd. (b)(1).)

8) Provides that if neither party objects to any competency report submitted pursuant to subdivision (b), the court may determine the competency of the defendant based on any such competency report. The court shall also determine whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication. (Pen. Code, § 1369, subd. (c)(1).)

9) States that if either party objects to any competency report and requests a hearing, the court shall hold a hearing to determine competence and to determine whether the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication. In a hearing to determine competence, the defendant shall be presumed competent to stand trial unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. (Pen. Code, § 1369, subd. (c)(2)-(3).)

10) Requires generally a defendant's competency to stand trial to be decided by jury trial. The verdict of the jury shall be unanimous. (Pen. Code, §1369, subd. (c)(4).)

11) States that only a court trial is required to determine competency in a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen Code, § 1369, subd. (c)(5).)

12) Provides that if a defendant is found mentally competent, the criminal process shall resume and the trial on the offense charged or the hearing on the alleged violation shall proceed. (Pen. Code, § 1370, subd. (a)(1)(A).)

13) States that if the defendant is found mentally incompetent and is not charged with a statutorily ineligible offense for mental health diversion, the trial, or judgement, or hearing on the alleged violation shall be suspended and the court shall do all of the following:

    a) Determine whether restoring the person to mental competence is in the interests of justice, as provided. If restoring the person to mental competence is in the interests of justice, the court shall state its reasons orally on the record. If it is not in the interests of justice, the court shall hold a hearing to determine whether to grant mental health diversion. If the court deems the defendant eligible, grant diversion pursuant to that section 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.

    b) If the court finds the defendant ineligible or unsuitable for diversion, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

        i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

        ii) Refer the defendant to AOT, as provided. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetence. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance

pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed in the interests of justice.

iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant, as provided. A defendant shall only be referred to the conservatorship investigator if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled, as defined. The charges shall be dismissed in the interests of justice upon the filing of either a temporary or permanent conservatorship petition, except as specified.

iv) Refer the defendant to the CARE program as provided. If the defendant is accepted into the CARE program, the charges shall be dismissed in the interests of justice.

v) Reinstate competency proceedings, in which case the court shall credit any time spent in mental health diversion against the maximum term of commitment. (Pen. Code, §1370, subd. (a)(1)(B).)

14) States that if the court finds that restoring the defendant to competence is in the interests of justice or the defendant is not eligible for mental health diversion, the court shall order the defendant be delivered by the sheriff to a State Department of Hospitals (DSH) facility or other approved facility that will promote the defendant's speedy restoration to mental competence. (Pen. Code, §1370, subd. (a)(1)(B).)

15) Requires within 90 days after a commitment made pursuant to subdivision (a), the medical director of the Department of State Hospital (DSH) facility or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. (Pen. Code, § 1370, subd. (b)(1).)

16) Provides that if the report indicates that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. (Pen. Code, § 1370, subd. (b)(1)(A).)

17) States that at the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court, and custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. (Pen. Code, §1370, subd. (c)(1).)

18) Provides that whenever a defendant is returned to the court pursuant to the above, and it appears to the court that the defendant is gravely disabled, as defined, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate

conservatorship proceedings for the defendant. (Pen. Code, § 1370, subd. (c)(3).

19) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Sponsors**: California District Attorneys Association (CDAA) and Family Advocates for Individuals With Serious Mental Illness (FAISMI) of Sacramento.

2) **Author's Statement**: According to the author, "SB 1401 seeks to align the time frames for dismissal and sharing of information in IST (incompetent to stand trial) cases to allow the court "in addition to a mental health expert" to find that a defendant appears to be gravely disabled in order to facilitate a referral for conservatorship investigation.

"This bill would, consistent with similar provisions in Section 1370.01, provide that for felonies under Section 1370, if the defendant is accepted into Assisted Outpatient treatment, has a petition for the establishment of a conservatorship filed, or is accepted into CARE Court, require the court dismiss the charges at specified timeframes.

"SB 1401 would also amend Section 1370 to authorize, similar to that in Section 1370.01, the county behavioral health agency and jail medical providers to share confidential medical records and other relevant information with the court for the purpose of determining likelihood of eligibility and suitability for behavioral health services and programs including Assisted Outpatient, CARE, and conservatorship.

"Lastly, this bill would amend Section 1370.01 consistent with the nearly identical provision in Section 1370 to authorize the court in a misdemeanor case, in addition to a qualified mental health expert, to make a finding that defendant appears to be gravely disabled to facilitate the referral of a defendant, found to be IST, to the county conservatorship investigator."

3) **Mental Competency in Criminal Proceedings:** The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code, § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

   In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

   Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

   For defendants charged with a felony, if after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code, §§ 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

   The maximum term of commitment for an IST defendant charged with a felony is two years, however, no later than 90 days prior to the expiration of the defendant's term of commitment, if the defendant has not regained mental competence shall be returned to the committing court and the court shall not order the defendant returned to the custody of DSH. (Pen. Code, § 1370, subd. (c)(1).) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action may be dismissed in the interests of justice. (Pen. Code, § 1370, subd. (d).)

For defendants charged with a misdemeanor, if the defendant is found IST, the proceedings shall be suspended and the court shall hold a hearing to determine whether to do one or more of the following: 1) conduct a hearing to determine whether the defendant is eligible for mental health diversion; or 2) refer the defendant to the CARE Act court if the defendant or defense counsel agrees to the referral and the court has reason to believe the defendant is eligible for the CARE program. (Pen. Code, § 1370.01, subd. (b)(1)-(2).)

If a misdemeanor defendant is found eligible for diversion, the court may grant 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 complaint, whichever is shorter. (Pen. Code, § 1370.01, subd. (b)(1)(A)(i).) If the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed in the interests of justice 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 consider the defendant for mental health diversion. (Pen. Code, § 1370.01, subd. (b)(2).)

If the court finds the misdemeanor IST defendant ineligible or unsuitable for diversion, the court shall do one of the following: 1) order modification of the treatment plan in accordance with a recommendation from the treatment provider; 2) refer the defendant to AOT; 3) refer the defendant to the county conservatorship investigator for possible conservatorship if the defendant appears to be gravely disabled, as defined; or 4) refer the defendant to the CARE program. (Pen. Code, § 1370.01, subd. (c).)

The acceptance of the defendant into one of these programs or upon filing a petition for conservatorship results in the dismissal of the person's criminal charges, similar to the felony IST statute. (Pen. Code, § 1370, subd. (a)(1)(B)(iii).) Recently, the misdemeanor IST statute was amended to delay dismissal of the underlying criminal offense. Instead of dismissal upon acceptance into AOT or a CARE program or upon filing of a petition for conservatorship, the statute now requires dismissal six months after referral to AOT or CARE, and 90 days after the filing of the petition for conservatorship, unless the defendant's case has been referred back to the criminal court within that specified timeframe. (SB 1400 (Stern), Ch. 647, Stats. 2024.) Additionally, prior to SB 1400, the misdemeanor IST statute expressly authorized the court to dismiss the charges in the interests of justice in lieu of referral to AOT, CARE court or conservatorship. SB 1400 changed the law to instead authorize dismissal if the defendant does not qualify for one of those specified services. (Pen. Code, § 1370.01, subd. (c)(5).)

This bill amends the felony IST statute with the same delayed dismissal timeframes that were enacted by SB 1400. However, the same rationale for its need does not apply here. According to this committee's analysis of SB 1400, the proponents of the bill argued that an earlier change in the law enacted by SB 317 (Stern), Chapter 599, Statutes of 2021, which among other things removed the option to send a misdemeanor IST defendant to DSH for restoration and expressly authorized the court to dismiss these cases, led to an increase of misdemeanor

dismissals without a referral to treatment.[1] Restoration of competency for felony IST defendants remains an option in existing law and the committee has not seen any data to suggest that felony IST charges are being dismissed at high rates without a referral to treatment.

4) **Dismissals in the Interests of Justice:** Penal Code section 1385 gives discretion to judges to strike or dismiss a prior conviction or added punishment in the interests of justice. The California Supreme Court has ruled that even if a statute prescribing a particular sentence uses the term "shall," this is insufficient to evidence an intent that the trial court was precluded from exercising such discretionary powers. (See *People v. Williams* (1981) 30 Cal.3d 470.) In *Williams*, the Court reviewed the history and purpose of Penal Code section 1385:

> The trial court's power to dismiss an action has been recognized by statute since the first session of the Legislature in 1850. The rules of criminal procedure enacted in that session included the provision that "[the] Court may, either of its own motion, or upon the application of the District Attorney, and in furtherance of justice, order any action, after indictment, to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes." (Stats. 1850, ch. 119, § 629, p. 323.) With slight changes, this provision became section 1385 when the Penal Code was enacted in 1872.
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> "A determination whether to dismiss in the interests of justice after a verdict involves a balancing of many factors, including the weighing of the evidence indicative of guilt or innocence, the nature of the crime involved, the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, the possible harassment and burdens imposed upon the defendant by a retrial, and the likelihood, if any, that additional evidence will be presented upon a retrial. When the balance falls clearly in favor of the defendant, a trial court not only may but should exercise the powers granted to him by the Legislature and grant a dismissal in the interests of justice." (*People v. Superior Court of Marin County (Howard)* (1968) 69 Cal. 2d 491, 505.)
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> The court also discussed the policy served by [the section at issue in the case]. "Mandatory, arbitrary or rigid sentencing procedures invariably lead to unjust results. Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender. Subject always to legislative control and appellate

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[1] The analysis cites information provided by the author that since July 2022, approximately 80 individuals per month were found IST on a misdemeanor charge in Los Angeles County and assessed by the Office of Diversion and Reentry team. Of those assessed, about 75% were found to be suitable and released to the misdemeanor IST diversion program. While 25% of those assessed may have been found to be unsuitable for diversion, it is unclear how many of those cases were dismissed outright versus dismissed after first being referred to other treatment options such as AOT, CARE court or conservatorship. (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 1400 (2023-24 Reg. Sess) as amended Apr. 11, 2024.)

review, trial courts should be afforded maximum leeway in fitting the punishment to the offender." (*People v. Dorsey* (1972) 28 Cal.App3d 15, 18.)

(*People v. Williams*, *supra*, 30 Cal.3d at 479-482.)

The Court then looked to the legislative intent and found that there was no indication of contrary legislative intent and thus held that absent a clear expression of legislative intent in this regard, a sentencing statute will not be construed to abrogate a trial court's general section 1385 power to strike. (*Id.* at p. 482.)

In the context of dismissals in the interests of justice after a person has been found IST, existing law currently requires a court to dismiss felony charges upon the referral of the defendant to AOT, CARE Court, or conservatorship. (Pen. Code, § 1370, subd. (c).)

This bill delays dismissal of the charges until six months after referral to AOT or CARE Court and 90 days after a petition is filed for conservatorship. This bill prohibits dismissal if the defendant's case is referred back to the criminal court within the six-month or 90-day window. This delayed dismissal timeframe is found in the existing misdemeanor IST statute which was recently amended to specify this timeframe.[2] The felony IST statute was also recently amended to include these specified programs in lieu of diversion or restoration, which seems to have been pulled directly from the language as it existed in the misdemeanor statute.[3] Both bills moved forward in 2024 and was signed into law with these differences in these provisions.

According to proponents of this bill, the language aligns the different IST statutes and may avoid delays in referrals to appropriate treatment options, including conservatorship, CARE Court, and AOT, which may limit the court's ability to make timely and informed decisions about patient care

5) **Expansion of Court Authority to Refer a Misdemeanor IST Defendant to Conservatorship Proceedings**: Existing law authorizes a misdemeanor IST defendant to be referred to the county conservatorship investigator for possible conservatorship proceedings if, based on the opinion of a qualified mental health expert, the defendants appears to be gravely disabled, as defined. This bill would additionally authorize a misdemeanor IST defendant to be referred to the county conservatorship investigator if, in the opinion of the court, the defendant appears to be gravely disabled.

It appears that the court has similar authority to refer an IST defendant for possible conservatorship proceedings in the felony IST statute "if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled." (Pen. Code, § 1370, subd. (a)(1)(B)(iii)(III)(ic).) Adding this change to the misdemeanor statute would align the scope of authority that the judge has in both types of cases.

Opponents of this bill argue that mental health experts are the appropriate persons to make this referral decision not the court and that increasing the types of persons who may initiate

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[2] SB 1400 (Stern), Ch. 647, Stats. 2024.
[3] SB 1323 (Menjivar), Ch, 646, Stats. 2024.

conservatorship investigations will result in increasing the volume and risk of inappropriate conservatorships.

6) **Sharing of Confidential Medical Records**: Generally, a person's medical records include psychotherapy and treatment records and are confidential. This bill, in print, 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.

   While the bill states that disclosure of information is subject to applicable state and federal privacy laws which likely means the court cannot share with third parties, it is unclear why the court would need to see confidential treatment notes and whether the court is the appropriate evaluator of detailed medical information. According to opponents of the bill, county behavioral health and jail medical providers already routinely share topline recommendations regarding eligibility for behavioral health services and programs. Opening up the disclosure of additional details – including confidential medical records and therapy notes – is not necessary, and may create additional barriers to receiving treatment or being honest during treatment.

   Existing law within the misdemeanor IST statute 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. This was added to the misdemeanor IST statute last year as part of a larger reform to CARE Act court proceedings and referrals.[4] That bill started off in the Senate making minor changes to the CARE Act but was greatly expanded once it got to the Assembly triggering referral to three committees – Health, Judiciary, and Public Safety. According to the author's statement in this Committee's analysis, the bill authorizes sharing of data between CARE partners and allowing additional licensed medical professionals to participate. As discussed above, the goal of this bill is to align the misdemeanor and felony IST statutes and thus the bill, in print, incorporates this same language into the felony IST statute.

   In order to address opposition concerns, the author is planning to amend the bill in committee to revise this sharing provision to instead provide that the county behavioral health agency or its designee may report to the court regarding relevant medical information, including, but not limited to, prior treatment interactions with the defendant, for the purpose of determining eligibility for behavioral health services. The information shall not be used for any other purpose. The information shall be kept confidential and after the disposition of the case shall be placed under seal and shall not be subject to disclosure to any person or entity.

   With the goal of aligning both the felony IST statute and the misdemeanor IST statute in mind, the amendments would also revise the sharing provision in the misdemeanor IST statute with this same language.

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[4] SB 27 (Umberg), Chapter 528, Statutes of 2025.

7) **IST Treatment Delays and Recent Litigation:** Over the last decade, the number of people in California charged with a felony offense and found IST has increased significantly, far outpacing the state's ability to provide timely services in response. Following litigation, the state was placed under a court order to reduce the time it takes to admit someone to the state hospital to restore them to competency. (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (*Id*. at p. 737.) The Court ordered that DSH must begin substantive restoration services within 28 days of being placed on the list. (*Id*. at p. 730.) The court's order is being implemented in phases, with the original target date set on February 27, 2024, to meet the 28-day standard.

   To comply with the order, implemented new programs with an emphasis on community-based treatment to meet the growing need and reduce the waitlist for treatment.[5]

   On October 6, 2023, the court modified the interim benchmarks and final target date for compliance with the 28 day standard as follows: March 1, 2024 – provide substantive treatment services within 60 days; July 1, 2024 – within 45 days; November 1, 2024 – within 33 days; and March 1, 2025 – within 28 days.[6] DSH filed a report to the court on March 28, 2025, demonstrating substantial compliance with the court's order. As of March 2026, the court is reviewing the matter to determine whether DSH is in substantial compliance.[7]

   This bill delays dismissal of a person's criminal charges when a petition for conservatorship is filed for the defendant, or they've been accepted into AOT or CARE Act court and if the defendant is returned to the court within the delayed timeframe, the charges would not be dismissed. As discussed above, this same timeline for delayed dismissal exists in the misdemeanor IST statute. However, unlike misdemeanor IST defendants who are not authorized to be sent to DSH for restoration, delaying dismissal of these felony cases may increase the number of people who end up on the DSH waitlist.

8) **Argument in Support**:

   a) According to *California District Attorneys Association*, "This bill would align the time frames for dismissal in Section 1370 with that of similar provisions in Section 1370.01, if a defendant is accepted into Assisted Outpatient treatment, has a petition for the establishment of a conservatorship filed, or is accepted into CARE Court. It also facilitates the sharing of confidential information in felony cases under Section 1370, as 1370.01 provides, to assist with the determination of eligibility and suitability for behavioral health services and programs. Lastly, it aligns Section 1370.01 with that of 1370 which allows a court in addition to a mental health expert to make a finding as to grave disability to facilitate a referral for conservatorship."

   b) According to *California State Association of Psychiatrists (CSAP)*, "Under current law, key procedural elements—such as timelines for dismissal, the ability to share relevant

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[5] DSH 2026-27 May Revision Highlights, https://www.dsh.ca.gov/About_Us/docs/DSH_2026-27_May_Revision_Highlights.pdf.
[6] DSH, 2026-27 Governor's Budget Estimate, https://www.dsh.ca.gov/About_Us/docs/DSH_2025-26_Governor's_Budget_Highlights.pdf.
[7] Id. at footnote 3.

information with the court, and standards for determining grave disability—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. The bill also allows courts, in addition to mental health experts, to determine when a defendant appears to be gravely disabled in order to facilitate referral for conservatorship investigation. 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."

9) **Argument in Opposition**:

a) According to *California Public Defenders Association*, who is opposed unless amended, "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. As currently drafted, this provision raises serious due process and public policy concerns, particularly where such sensitive and private information may be disclosed in criminal proceedings and ultimately provided to the parties, including the prosecution.

"The disclosure provisions in SB 1401 would erode trust in the mental health system. If individuals believe that sensitive disclosures made in the course of treatment may later be shared in a criminal proceeding, and potentially accessed by the District Attorney, they may be far less likely to seek voluntary mental health care. California has made substantial efforts to expand access to behavioral health services and to encourage early, voluntary engagement in treatment. This proposal moves in the opposite direction by creating a strong disincentive to seek care.

"Even for those who continue to access services, SB 1401 would chill candid communication between patients and providers. Effective mental health treatment depends on a foundation of trust and openness. Patients must feel secure in disclosing deeply personal and often stigmatizing information. The prospect that such disclosures could later be used in an adversarial criminal process will predictably result in less complete and accurate reporting. This, in turn, undermines diagnosis, treatment planning, medication adherence, and overall outcomes."

b) According to *Disability Rights California*, "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. As currently drafted, this provision raises serious due process and public policy concerns, particularly where such sensitive and private information may be disclosed in criminal proceedings and ultimately provided to the parties, including the prosecution.

"The disclosure provisions in SB 1401 would erode trust in the mental health system. If individuals believe that sensitive disclosures made in the course of treatment may later be shared in a criminal proceeding, and potentially accessed by the District Attorney, they may be far less likely to seek voluntary mental health care. California has made substantial efforts to expand access to behavioral health services and to encourage early, voluntary engagement in treatment. This proposal moves in the opposite direction by creating a strong disincentive to seek care.

"Even for those who continue to access services, SB 1401 would chill candid communication between patients and providers. Effective mental health treatment depends on a foundation of trust and openness. Patients must feel secure in disclosing deeply personal and often stigmatizing information. The prospect that such disclosures could later be used in an adversarial criminal process will predictably result in less complete and accurate reporting. This, in turn, undermines diagnosis, treatment planning, medication adherence, and overall outcomes.

"The bill also creates significant due process and confidentiality concerns. Permitting broad disclosure of treatment history to the court, without clear and enforceable limits on redisclosure, creates a substantial likelihood that confidential medical information will be accessed and used by the prosecution. This expands the use of therapeutic records beyond their intended clinical purpose and into the adversarial process, where they may be relied upon to support arguments regarding dangerousness, credibility, or punishment. Such uses are inconsistent with longstanding protections for medical privacy and compromise the integrity of the therapeutic relationship."

10) **Related Legislation**: None

11) **Prior Legislation**:

a) SB 27 (Umberg), Chapter 528, Statutes of 2025, among other things changes to CARE Court processes and referral, authorized a 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 a misdemeanor IST defendant, for the purpose of determining likelihood of eligibility for behavioral health services and programs.

b) SB 1400 (Stern), Chapter 647, Statutes of 2024, among other things, required a court to wait a specified period of time after a misdemeanor IST defendant is placed in a conservatorship, AOT, or CARE court, before dismissing the case and added provisions relating to CARE Act reporting.

c) SB 1323 (Menjivar), Chapter 646, Statutes of 2024, requires the court, upon a finding a defendant charged with a felony IST, to determine if it is in the interests of justice to restore the defendant to competence, and if the restoration of the defendant's mental competence is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant, as specified, and, if none of those solutions are appropriate, to dismiss the charges against the defendant.

d) AB 2692 (Papan), of the 2023-2024 Legislative Session, would have specified that the diversion period for an IST defendant commences when the defendant is admitted to receive treatment, as specified, and authorize the court, in its discretion, to extend the duration of diversion for a period not to exceed four months based on the recommendation of the defendant's mental health treatment provider in order to continue the defendant's progress in treatment. AB 2692 was held in Senate Appropriations' suspense file.

e) SB 317 (Stern), Chapter 599, Statutes of 2021, revised the procedures when a defendant is found mentally incompetent to stand trial (IST) on misdemeanor charges. Allowed a defendant to earn conduct credits when he or she is committed to a state hospital or other mental health treatment facility as IST in the same manner as if they were held in county jail.

f) SB 1187 (Beall), Chapter 1008, Statutes of 2018, reduced the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years. Specified that when a defendant has been found IST and is held in a county jail treatment center while undergoing treatment for restoration to competency, that person is entitled to custody credits in the same manner as any other inmate confined to a county jail.

g) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, specified that when a defendant is determined to be IST, the court can find that they are an appropriate candidate for mental health diversion.

h) SB 1412 (Nielsen), Chapter 759, Statutes of 2014, applied procedures relative to persons who are IST to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, postrelease community supervision (PRCS), or parole.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Association of Psychiatrists
Los Angeles County District Attorney's Office
National Alliance on Mental Illness (NAMI-CA)
Riverside County District Attorney
Ventura County District Attorney's Office

Opposition

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

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