

Date of Hearing: August 5, 2026

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 1401 (Stern) – As Amended June 25, 2026

Policy Committee: Public Safety

Vote: 9 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill delays dismissal of felony charges against a defendant found incompetent to stand trial (IST) who is referred to specified county behavioral health programs, and makes conforming changes to the felony and misdemeanor IST statutes.

More specifically, this bill:

- 1) Requires a court to dismiss felony charges six months after the date of referral to assisted outpatient treatment (AOT), rather than upon the defendant's acceptance into AOT, unless the case is referred back to the court before that period expires.
- 2) Requires a court to dismiss felony charges 90 days after the filing of a petition for a temporary or permanent conservatorship, rather than upon the filing of the petition, unless the case is referred back to the court before that period expires.
- 3) Requires a court to dismiss felony charges six months after the date of referral to the Community Assistance, Recovery and Empowerment (CARE) program, rather than upon acceptance into the program, unless the case is referred back to the court before that period expires; changes the trigger for the existing 14-court-day eligibility hearing from the filing of the petition to the date of referral; and requires the CARE Act court to notify the criminal court when a defendant is accepted.
- 4) Authorizes a county behavioral health agency or its designee to report to the court relevant confidential medical information, including prior treatment interactions with the defendant, for the purpose of determining eligibility for behavioral health services; bars use of that information for any other purpose; and requires the information to be sealed after disposition of the case.
- 5) Authorizes referral of a misdemeanor IST defendant to the county conservatorship investigator based on the opinion of the court, in addition to the opinion of a qualified mental health expert.

FISCAL EFFECT:

Trial court cost pressures of up to \$600,000 annually (Trial Court Trust Fund (TCTF), General Fund (GF)), according to the Judicial Council, for additional hearings resulting from cases referred back to the criminal court before dismissal. Replacing dismissal at the point of acceptance or petition filing with dismissal after a six-month or 90-day waiting period keeps

felony criminal cases open on court calendars during those periods and creates a category of cases that may be referred back to the criminal court for further proceedings. A case referred back requires additional appearances and may require reinstatement of competency proceedings, appointment of experts, and a further competency determination. The Judicial Council notes that the estimate depends heavily on how often cases are actually referred back, because the referral provision is permissive. A comparable mechanism exists for misdemeanor cases, and referrals back to court are not common in that context; the Judicial Council observes that referrals may occur more regularly under this bill given the focus on felonies. Although courts are not funded on the basis of workload, increased pressure on the TCTF may create a demand for increased funding for courts from the GF. The state budget provides annual GF backfills to the TCTF to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.

COMMENTS:

1) **Purpose.** 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.

The author states the bill conforms the felony statute to provisions already operative in the misdemeanor statute. The bill is sponsored by the California District Attorneys Association and Family Advocates for Individuals With Serious Mental Illness of Sacramento.

2) **Background.** Due process bars the criminal prosecution of a defendant who is not mentally competent — that is, one who cannot understand the proceedings or assist counsel. When a defendant is found IST, the court suspends the criminal case and must decide what happens next.

Restoration. For felony defendants, the court first determines whether restoring the defendant to competence is in the interests of justice. Restoration is treatment directed at making the defendant competent so the criminal case can resume, generally provided through a commitment to the Department of State Hospitals (DSH), and is limited to two years or the maximum term for the charged offense, whichever is shorter. In making that determination, the court considers the harm done to the victim, the defendant's mental health condition and treatment history, whether the defendant is likely to face incarceration if convicted, and whether restoration would enhance public safety. If restoration is in the interests of justice, the defendant is committed for treatment. If it is not, the court considers mental health diversion, and a defendant found ineligible or unsuitable for diversion may then be referred to assisted outpatient treatment (AOT), to a county conservatorship investigator, or to CARE court. Defendants charged with certain serious offenses do not go through this sequence; for them, restoration is the only available disposition.

IST Statutes. In 2024, two separate bills amended the misdemeanor and felony IST statutes at the same time, and the two came out slightly different. SB 1323 (Menjivar), Chapter 646, Statutes of 2024, required a hearing to consider granting mental health diversion or other programs to the defendant, following a restoration determination, as specified, with the charges dismissed as soon as the defendant is accepted into a program or a conservatorship

petition is filed. SB 1400 (Stern), Chapter 647, Statutes of 2024, made the same programs (AOT, CARE, conservatorship) available in misdemeanor cases but built in a waiting period before dismissal — six months after referral to AOT or CARE, and 90 days after a conservatorship petition is filed — so that a defendant whose placement does not work out can be sent back to criminal court before the case is closed. This bill applies the same waiting periods to felony cases.

The waiting period in misdemeanor cases responded to an earlier change in the law. SB 317 (Stern), Chapter 599, Statutes of 2021, removed restoration as an option for misdemeanor defendants and expressly authorized courts to dismiss those cases. According to the Assembly Public Safety analysis, proponents of SB 1400 argued that this led to an increase in misdemeanor dismissals without a referral to treatment. That analysis observes that the same rationale does not carry over to felony cases, because restoration remains available to felony defendants, and notes that the committee has not seen data indicating felony IST charges are being dismissed at high rates without a referral to treatment. DSH, for its part, does not anticipate a fiscal or policy impact from this bill, stating that the felony provisions apply to individuals already in AOT, conservatorship, or CARE, and thus outside its care.

- 3) **Opposition.** Opponents, including the California Public Defenders Association, Disability Rights California, ACLU California Action, and Local 148, Los Angeles County Public Defender's Union, argue that disclosure of treatment information to the criminal court will chill candid communication between patients and providers and may result in therapeutic records being used in the adversarial process. Opponents also argue that expanding conservatorship referral authority to the court, without a qualified mental health expert's opinion, will increase the volume of conservatorship investigations and the risk of inappropriate conservatorships. Those positions were registered against the bill as introduced, which would have imported the misdemeanor statute's existing disclosure provision — added by SB 27 (Umberg), Chapter 528, Statutes of 2025 — into the felony statute without change. The author amended the bill in Assembly Public Safety to narrow that provision in both statutes, replacing the sharing of confidential medical records by behavioral health agencies and jail medical providers with a report of relevant information by the agency or its designee, limited to the eligibility determination and subject to a use restriction and a sealing requirement. It is unclear whether the opposition maintains its position against the amended version.