

SENATE THIRD READING
SB 1401 (Stern)
As Amended August 21, 2026
Majority vote

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.

Major Provisions

- 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.

- 7) *Clarifies that for the purpose of when a defendant is returned to the court, as specified, a person is “gravely disabled” if the person both has a condition, as a result of a specified mental health or substance use disorder, making them unable to provide for their basic needs and a condition for which they have been found mentally incompetent, as opposed to just either of those conditions.*

COMMENTS

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."

Arguments in Support

- 1) 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."
- 2) According to *California State Association of Psychiatrists (CSAP)*, "Under current law, key procedural elements—such as timelines for dismissal, the ability to share relevant 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."

Arguments in Opposition

- 1) 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."

- 2) 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.

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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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "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."

VOTES

SENATE FLOOR: 33-0-7

YES: Archuleta, Arreguín, Ashby, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASM PUBLIC SAFETY: 9-0-0

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

ASM APPROPRIATIONS: 15-0-0

YES: Wicks, Hoover, Arambula, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta, Tangipa

UPDATED

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