
UNFINISHED BUSINESS

Bill No: SB 1401
Author: Stern (D)
Amended: 8/21/26
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

SENATE FLOOR: 33-0, 5/22/26
AYES: 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
NO VOTE RECORDED: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASSEMBLY FLOOR: Passed, 8/26/26

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 to share confidential medical records and other relevant information with the court for the purpose of determining eligibility for behavioral health services; 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.

Assembly Amendments apply the following changes to both the felony and misdemeanor IST statutes: (1) remove jail medical providers from the entities authorized to share confidential medical records with the court; and (2) prohibit the confidential information shared by a county behavioral health agency with the court from being used for any purpose other than determining eligibility for services and require the information to be placed under seal after the disposition of the case.

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 Community Assistance, Recovery and Empowerment (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 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 eligibility for behavioral health services. 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 to share confidential medical records and other relevant information with the court, including, but not limited to, prior treatment interactions with the defendant, for the purpose of determining eligibility for behavioral health services. 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 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.

SUPPORT: (Verified 8/24/26)

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 8/24/26)

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

Prepared by: Stephanie Jordan / PUB. S. /
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