Date of Hearing: July 1, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 820 (Stern) – As Amended June 25, 2025

As Proposed to be Amended in Commitee

SUMMARY: Authorizes, until January 1, 2030, a separate process to involuntarily medicate individuals charged with a misdemeanor who have been found to be incompetent to stand trial (IST), as specified. Specifically, **this bill**:

1) States, notwithstanding existing procedures for involuntary medication of pretrial county jail inmates, if an individual charged with a misdemeanor and who is confined in county jail has been found IST, antipsychotic medication may be administered without the defendant's informed consent in either an emergency, as defined, or upon a court's determination that the defendant is gravely disabled, as defined, and does not have the capacity to consent to or refuse treatment with antipsychotic medication.

2) Provides that in case of an emergency, the following procedures apply:

    a) Antipsychotic medication may, despite the individual's objection, be administered before a capacity hearing if the medication is necessary to address the emergency condition and is administered in the least restrictive manner, only for the duration of the emergency, and in no case for more than 72 hours, except as provided below.

    b) If a psychiatrist determines that continued administration of antipsychotic medication is necessary beyond the initial 72 hours and the individual does not consent to take the medication voluntarily, the psychiatrist may petition the superior court in the county where the individual is confined to order continued treatment with antipsychotic medication.

    c) The petition and written notice describing the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication shall be filed within the initial 72-hour period that the antipsychotic medication is administered and served on the individual and their counsel.

3) Defines an "emergency" by way of reference to existing provisions of law, as either:

    a) A situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment; or,

b) When there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent.

4) Defines "gravely disabled" by way of reference to existing law as 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.

5) Provides that upon a court's determination that an individual is gravely disabled and that the individual does not have the capacity to consent to or refuse treatment with antipsychotic medication, the court shall consider opinions in the reports prepared by a licensed psychologist or psychiatrist evaluating the individual's competency as applicable to the issue of whether the individual lacks the capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

a) The court shall conduct a hearing, which may occur at the same time as the competency hearing, before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer to determine whether any of the following is true:

i) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court, the individual lacks the capacity to make decisions regarding antipsychotic medication, the individual's mental disorder requires medical treatment with antipsychotic medication, and, if the individual's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the individual will result. Probability of serious harm to the physical or mental health of the individual requires evidence that the individual is presently suffering adverse effects to their physical or mental health, or the individual has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that an individual has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the individual.

ii) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court, the individual is a danger to others, in that the individual has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the individual had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the individual being taken into custody, and the individual presents, as a result of mental disorder or mental defect, a danger of inflicting substantial physical harm to others.

b) If the court finds the conditions described above to be true, and has considered the requisite conditions as specified in 8) below, and if pursuant to the opinion offered to the court on the individual's competency, a psychiatrist or licensed psychologist has opined that treatment with antipsychotic medication may be appropriate for the individual, the court may issue an order authorizing the administration of antipsychotic medication as

needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

6) States that the fact that an individual has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the individual is able to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care, which shall be evaluated based upon the individual's ability to provide for those needs while not incarcerated.

7) Provides the following rights to an individual before an order authorizing involuntary medication:

   a) To receive written notice of the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication;

   b) To be represented by counsel at all stages of the proceedings;

   c) To receive timely access to their medical records and files;

   d) To be present at all stages of the proceedings; and,

   e) To present evidence and cross-examine witnesses.

8) States that after the hearing, a court may order involuntary medication to be administered if the court finds by clear and convincing evidence that all of the following conditions are met:

   a) A psychiatrist or psychologist has determined that the individual has a serious mental health disorder that can be treated with antipsychotic medication;

   b) A psychiatrist or psychologist has determined that, as a result of that mental health disorder, the individual is gravely disabled and lacks the capacity to consent to, or refuse treatment with, antipsychotic medications;

   c) That serious harm to the physical or mental health of the individual is likely to result absent treatment with antipsychotic medication;

   d) A psychiatrist has prescribed one or more antipsychotic medications for the treatment of the individual's disorder, has considered the risk, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the individual;

   e) The individual has been advised of the expected benefits of any potential side effects and risks to the individual, any alternatives to treatment with antipsychotic medication, and refuses, or is unable to consent to, the administration of the medication;

   f) The jail has made a documented attempt to locate an available bed for the individual in a community-based treatment facility in lieu of seeking to administer involuntary medication. If a community-based alternative is not available, medication shall only be

administered by noncustody, health care staff and individuals will be monitored at least every 15 minutes for at least one hour after administration of medication; and,

g) There is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best medical interest.

9) Prohibits the individual's confinement form being extended to provide treatment to the individual with antipsychotic medication.

10) States that an order authorizing administration of antipsychotic medication shall be valid until the first of the following events occurs:

a) 90 days from the date the individual is found IST;

b) 90 days after the date when the individual is referred to Community Assistance, Recovery, and Empowerment (CARE) court, assisted outpatient treatment or county conservatorship;

c) Upon order of any court with jurisdiction over the individual including the programs listed above; or,

d) The individual is released from custody.

11) Requires the court to review the order no more than 60 days after an involuntary medication order is issued to determine whether the grounds for the order remains.

12) States that a person who is subject to the court's order to involuntarily receive medication has the legal and civil rights set forth in the Lanterman-Petris-Short Act.

13) Specifies that an individual is not precluded from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing the administration of antipsychotic medication.

14) Provides that when a person in custody is transferred from a jail to a 72-hour facility for treatment and evaluation, the fact that the person has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the person is able to provide for their basic personal needs, which shall be evaluated based upon the person's ability to provide for those needs outside the jail setting.

15) Sunsets its provisions on January 1, 2030 unless a later enacted statute deletes or extends the date.

EXISTING LAW:

1) Prohibits a person from being tried or adjudged to punishment or have their 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 determine whether the defendant is incompetent to stand trial (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) Authorizes the court to order involuntary medication for a felony IST defendant for a period not to exceed one year after the court has conducted a hearing to determine whether any of the following is true:

   a) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant lacks the capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to their physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant;

   b) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence; or,

   c) The people have charged the defendant with a serious crime against the person or property, and based upon the opinion of the psychiatrist offered to the court pursuant to subdivision (b) of Section 1369, the involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is medically necessary and

appropriate in light of their medical condition. (Pen. Code, § 1370, subd. (a)(2)(B)(i) & (iii).)

6) States that if the court finds the first or second condition described above to be true and a licensed psychiatrist or psychologist has opined that treatment with antipsychotic medication is appropriate, the court may issue an order authorizing the administration of medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist. (Pen. Code, § 1370, subd. (a)(2)(B)(i)(i).)

7) Authorizes, until January 1, 2030, the administration of psychotropic medication on an involuntary basis to county jail inmates who are awaiting arraignment, trial, or sentencing if a psychiatrist determines that the inmate should be treated with psychiatric medication and specified procedures are followed. (Pen. Code, § 2603, subd. (b).)

8) Authorizes, until January 1, 2030, the administration of medication without a defendant's consent on a nonemergency basis only if all of the following conditions have been met:

   a) A psychiatrist or psychologist determines that the inmate has a serious mental disorder;

   b) A psychiatrist or psychologist determines, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;

   c) A psychiatrist prescribes one or more psychiatric medications for the treatment of the inmate's disorder, considers the risks, benefits, and treatment alternatives to involuntary medication, and determines that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;

   d) Advises the inmate of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;

   e) The jail has made a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities. Submission of a declaration under penalty of perjury is sufficient for the county to demonstrate a documented attempt to locate an available bed;

   f) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;

   g) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive expedited access to counsel;

h) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive an expedited hearing;

i) In the hearing described in paragraph (f), the superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness, the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest;

j) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder; and,

k) An inmate is entitled to file one motion for reconsideration following a determination that they may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. This paragraph does not prevent a court from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding. (Pen. Code, § 2603, subd. (c)(1-11).)

9) Provides, until January 1, 2030, that an order by the court authorizing involuntary medication of an inmate awaiting arraignment, trial or sentencing shall be valid for no more than 180 days and the court shall review the order at intervals of not more than 60 days to determine whether the ground for the order remains. At each review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the defendant and the defendant's attorney. (Pen Code, § 2603, subd. (e)(1)(B).)

10) States, until January 1, 2030, that in determining whether the criteria for involuntary medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order. (*Ibid*.)

11) States, until January 1, 2025, that in the case of an inmate awaiting arraignment, trial, or sentencing, the renewal order shall be valid for no more than 180 days and follows the same requirements in the initial order authorizing involuntary medication. (Pen Code, § 2603, subd. (h)(3)(B).)

12) Requires each county that administers involuntary medication to an inmate awaiting arraignment, trial, or sentencing between January 1, 2025 and July 1, 2018 to file, by January

1, 2029, a written report to the Senate Committee on Public Safety and the Assembly Committees on Public Safety summarizing the following:

a) The number of inmates who received involuntary medication while awaiting arraignment, trial, or sentencing between January 1, 2025 and July 1, 2028;

b) The crime for which those inmates were arrested, if it is practically feasible to obtain that information;

c) The total time those inmates were detained while awaiting arraignment, trial, or sentencing, if it is practically feasible to obtain that information;

d) The duration of the administration of involuntary medication;

e) The reason for termination of administration of involuntary medication;

f) The number of times, if any, that an existing order for the administration of involuntary medication was renewed; and,

g) The reason for termination of the administration of involuntary medication. (Pen. Code, §2603, subd. (l).)

13) Sunsets the provisions of law authorizing involuntary medication of inmates detained in county jail while awaiting arraignment, trial or sentencing on January 1, 2030. (Pen. Code, §2603, subd. (m).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California is facing mental health and homelessness crises, where vulnerable individuals are cycling in and out of our jails without getting adequate treatment. While the state has made massive investments in behavioral health infrastructure, it's going to take time for new beds to come online. In the meantime, demand is urgent and growing. Jails have become de facto treatment facilities, leaving vulnerable Californians who need treatment with minimal support and resources. The problem is acute for those declared incompetent to stand trial (IST) for a misdemeanor, who are experiencing severe mental health crises and have particularly high rates of recidivism. SB 820 builds on efforts to keep these individuals safe, out of the criminal justice system, and getting the help they need by granting doctors the discretion to use the medical treatment they deem most appropriate, including involuntary medication. By allowing involuntary medication orders during the crucial period between the IST hearing and the proffer of services, including mental health diversion and assisted outpatient treatment, this bill will prevent further deterioration while these individuals are in custody, bringing targeting resources to an already identified, impacted population to improve the likelihood that they are accepted into and consent to diversion options. SB 820 keeps existing protections while enabling these vulnerable individuals to access the treatment they need to stabilize, reintegrate into society, and achieve recovery."

2) **Background: 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, § 1369, 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. (*Ibid.*)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when a 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, they 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 may do either of the following: 1) conduct a hearing to determine whether the defendant is eligible for mental health diversion; or 2) dismiss the charges pursuant to Penal Code section 1385. If the charges are dismissed, the court shall transmit a copy of the order to county behavioral health director or the director's designee. (Pen. Code, § 1370.01, subd. (b).)

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).)

If the court finds that the defendant is not eligible 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: 1) order modification of the treatment plan in accordance with a recommendation from the treatment provider; 2) refer the defendant to assisted outpatient treatment (AOT); if the defendant is accepted into AOT, the charges shall be dismissed; 3) refer the defendant to the county conservatorship investigator for possible conservatorship if the defendant appears to be gravely disabled, as defined; if a conservatorship is established, the charges shall be dismissed; or 4) refer the defendant to the CARE program; if the defendant is accepted into CARE the charges shall be dismissed. (Pen. Code, § 1370.01, subd. (b)(1)(D).) Existing law provides that a person shall not remain confined beyond specified timeframes after the finding of IST or filing of petition, between 14 and 45 days, based on delays of the hearings to determine which of the alternatives to diversion is appropriate. (Pen. Code, § 1370.01, subd. (b)(1)(D).)

3) **Due Process Considerations and Involuntary Medication of Inmates**: In *Washington v. Harper* (1990) 494 U.S. 210, the U.S. Supreme Court held that a mentally-ill prisoner who is a danger to themselves or others can be involuntarily medicated. Furthermore, the Court held in *Riggins v. Nevada* (1992) 504 U.S. 127, that forced medication in order to render a defendant competent to stand trial for murder was constitutionally permissible under certain circumstances. Read together, the Court has stated that these two cases "indicate that the Constitution permits the Government to involuntarily administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is significantly necessary to the further important governmental trial-related interests." (*Sell v. United States* (2003) 539 U.S. 166, 179.)

   In *Sell*, the Court goes on to further specify the limited circumstances when the U.S. Constitution permits the government to administer drugs to a pretrial detainee against the mentally ill criminal detainee's will when seeking to render them competent for trial. Under those circumstances, all of the following conditions must apply:

   a) A court must find that important governmental interests are at stake. While bringing to trial a person accused of a serious crime is an important government interest, and timely prosecution satisfies the literal aspect of this element, that alone does not satisfy the purpose as there may be special circumstances that lessen its importance in a particular case. Consequently, this analysis must be done on a case-by-case basis. (*Id.* at p. 180;

Carter v. Superior Court (2006) 141 Cal.App.4th 992, 1002.)

b) A "court must conclude that involuntary medication will *significantly further* those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial." (*Sell, supra,* 539 U.S. at p. 181.)

c) A court must find that the administration of the drugs is "substantially unlikely" to have side effects that interfere significantly with the person's ability to assist his or her counsel in conducting a defense. (*Id., citing Riggins v. Nevada* (1992) 504 U.S. 127, 142-145.)

d) A court must find that involuntary medication is necessary to further those interests and that alternative, less intrusive treatments are unlikely to achieve substantially the same results. (*Id.)*

e) A court must find that administering the medication is medically appropriate, that is to say, in the inmate's best medical interest in light of his or her condition. (*Id.)*

The 9th Circuit Court of Appeal, in *United States v. Loughner* (9th Cir. 2012) 672 F.3d 731, considered the following issue: what substantive due process standard must the government satisfy to medicate involuntarily a pretrial detainee on the ground that they are dangerous? The court differentiated between *Harper* and *Sell*, stating that the standard that applies depends on the purpose of the involuntary medication:

> If the government seeks to medicate involuntarily a pretrial detainee on trial competency grounds, that is a matter of trial administration and the heightened standard announced in *Sell* applies. *See Sell*, 539 U.S. at 183. When dangerousness is a basis for the involuntary medication, however . . . , the concerns are the orderly administration of the prison and the inmate's medical interests. *See Harper*, 494 U.S. at 222-25; citations omitted.

The *Loughner* court stated, ". . . , we now hold that when the government seeks to medicate a detainee—whether pretrial or post-conviction—on the grounds that he is a danger to himself or others, the government must satisfy the standard set forth in *Harper*. '[T]he Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against their will, if the inmate is dangerous to themselves or others and the treatment is in the inmate's medical interest." (*Loughner, supra,* 672 F.3d at p. 752 (citing *Harper, supra,* at p. 227.)

4) **Existing Procedures for Involuntarily Medicating County Jail Inmates:** Existing law authorizes involuntary medication for persons charged with committing a felony and determined to be IST. (Pen. Code, § 1370, subd. (a)(2)(B).)

Existing law, starting January 1, 2013, also authorizes county jails to administer involuntary medication to sentenced inmates. (Pen. Code, § 2603; AB 1907 (B. Lowenthal), Ch. 814, Stats. 2012.) In 2017, the Legislature extended the involuntary medication procedure to inmates confined in county jail but not yet sentenced, including, but not limited to, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release. (AB 720 (Eggman), Ch. 347, Stats. 2017.) The law contained a sunset date of January 1, 2022 but was extended

through legislation until January 1, 2025, then again to January 1, 2030. (SB 1317 (Wahab), Ch. 326, Stats. 2024; SB 827 (Committee on Public Safety), Ch. 434, Stats. of 2021.)

Generally, an inmate confined in a county jail shall not be administered any psychiatric medication without their prior informed consent. (Pen. Code, § 2603, subd. (a).) However, if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication, either on an emergency basis or nonemergency basis as specified in the law. (Pen. Code, § 2603, subd. (b).) Emergency medication requires a showing that there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. (Pen. Code, § 2603, subd. (d).) The initial authorization period for medication in an emergency is 72 hours. (*Ibid*.)

For nonemergency involuntary medication of a county jail inmate, if a psychiatrist determines that an inmate should be treated with psychiatric medication, involuntary psychiatric medication may be administered if the following conditions are met:

- A psychiatrist or psychologist has determined that the inmate has a serious mental disorder;

- A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;

- A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;

- The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;

- The jail has made a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities;

- The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;

- The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered, in which case the inmate is to

receive expedited access to counsel. If the inmate is awaiting arraignment, the inmate shall be provided counsel within 48 hours of the filing of the notice of the hearing with the superior court, unless counsel has previously been appointed, and the hearing shall be held no more than 30 days after the filing of the notice with the superior court, unless the date is extended;

- The inmate and counsel are provided with written notice, containing specified information, of the hearing at least 21 days prior to the hearing, unless it is an emergency basis, in which the inmate shall get an expedited hearing;

- At the hearing, the judge, court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder and due to the illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest, as specified;

- The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder; and,

- An inmate is entitled to file one motion for reconsideration following a determination that they may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. A court is not prevented from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial, if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding. (Pen. Code, § 2603, subd. (c)(1)-(11).)

The law provides that in the case of an inmate awaiting arraignment, trial or sentencing, the involuntary medication order shall be valid for no more than 180 days. The court is required to review the order at intervals of not more than 60 days to determine whether grounds for the order remain. At each review, the psychiatrist is required to file an affidavit with the court affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. In making its decision, the court is required to consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order. (Pen. Code, § 2603, subd. (e)(1).)

The sunset date in existing law provides an opportunity for the Legislature to review the law and any reporting received from the counties that are using the involuntary medication law on inmates awaiting arraignment, trial or sentencing. With this population, as opposed to sentenced inmates, the Legislature was particularly concerned with interfering with the defendant's due process rights during criminal proceedings and included provisions allowing

for a motion for reconsideration and frequent reviews of the order, and prohibited extending an inmate's confinement.

5) **Effect of this Legislation:** This bill creates an alternative procedure to authorize a court to order administration of antipsychotic medication for persons charged with a misdemeanor and confined in jail based on an emergency, as defined, or if the person is gravely disabled, as defined, and lacks the capacity to make decisions regarding the administration of medication. According to supporters of this bill, existing Penal Code section 2603 does apply to misdemeanor IST defendants, however, this population is likely to be referred out to diversion or other outpatient programs before the process can be used.
For emergencies, the bill would allow administration of antipsychotic medication for a period of up to 72 hours, with the opportunity to go beyond the 72 hours upon petition to the superior court.

For persons deemed gravely disabled and unable to consent to or refuse treatment with antipsychotic medication, this bill requires the court, prior to issuing an order for involuntary medication, to find by clear and convincing evidence all of the following conditions:

a) A psychiatrist or psychologist has determined that the individual has a serious mental health disorder that can be treated with antipsychotic medication.

b) A psychiatrist or psychologist has determined that, as a result of that mental health disorder, the individual is gravely disabled and lacks the capacity to consent to, or refuse treatment with, antipsychotic medications.

c) That serious harm to the physical or mental health of the individual is likely to result absent treatment with antipsychotic medication.

d) A psychiatrist has prescribed one or more antipsychotic medications for the treatment of the individual's disorder, has considered the risk, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the individual.

e) The individual has been advised of the expected benefits of any potential side effects and risks to the individual, any alternatives to treatment with antipsychotic medication, and refuses, or is unable to consent to, the administration of the medication.

f) The jail has made a documented attempt to locate an available bed for the individual in a community-based treatment facility in lieu of seeking to administer involuntary medication. If a community-based alternative is not available, medication shall only be administered by noncustody, health care staff and individuals will be monitored at least every 15 minutes for at least one hour after administration of medication.

g) There is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best medical interest.

This hearing may occur at the same time as the hearing to determine the person's competency and may rely on some of the same information. The bill specifies that the person

has the right to be notified of the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication, as well as to be present at all proceedings, to be represented by counsel and to receive timely access to their medical records.

The bill would also provide that an individual's confinement may not be extended to provide treatment with antipsychotic medication and limit the duration of the order to the earliest of the following: 90 days from the date the individual is found IST, 90 days after the date when the individual is referred to CARE court, county conservatorship or assisted outpatient treatment. The court would be required to review the order no later than 60 days from the date it is issued to determine whether grounds for the order still remain and is authorized to continue the order, vacate the order, or make any other appropriate order. Additionally, the bill enumerates rights to individuals for which involuntary medication is sought, including specified notification requirements, representation by counsel, to be present at all stages of the proceeds and to receive timely access to their medical records and files.

Similar to existing Penal Code section 2603 authorizing involuntary medication of pretrial county jail inmates, this bill contains a sunset date of January 1, 2030. This sunset date will give the Legislature an opportunity to review the implementation of the law and make any changes, if needed.

6) **Argument in Support**: According to *California State Association of Psychiatrists*, the sponsor of this bill, "In the event of a defendant lacking mental competency to understand court proceedings, a judge may find them incompetent to stand trial (IST). In such cases, they are then offered alternatives, such as mental health diversion and assisted outpatient treatment (AOT). However, many defendants do not access these alternatives due to the severity of their symptoms and the fact that these programs remain voluntary. Should they be found ineligible or refuse to participate, their cases are typically dismissed with no further requirements of behavioral health services. This gap in care has severe consequences on recidivism rates and homelessness for this population despite them having been identified by the court as exceedingly vulnerable.

"SB 317 (Stern, 2021) made significant updates to the IST system for misdemeanor offenses. However, it inadvertently limited the ability of psychiatrists to utilize all available tools at their disposal, including involuntary medication. Regardless of medical necessity, there is currently no mechanism to compel these individuals to take prescribed medication – a crucial tool in stabilizing patients.

"California faces a significant and ongoing shortage of bed space. Because of this, these individuals often spend extended periods in jail while their mental health declines, ultimately making successful reintegration even more difficult. Until infrastructure catches up to demand, it is vital that the ability to provide involuntary medication during the crucial period between the IST hearing and the proffer of services be reinstated – exactly what SB 820 aims to do while retaining existing protections. Doing so will improve their chances of accepting and benefiting from treatment while reducing recidivism and homelessness."

7) **Argument in Opposition**: According to *Initiate Justice*, "SB 820 would create a new mechanism for issuing involuntary medication orders for incarcerated persons in county jail who face misdemeanor charges and have been deemed incompetent to stand trial. The author

states this is necessary because there are insufficient treatment facilities. We oppose SB 820 for the following reasons.

I. Administering involuntary medication without sufficient clinical oversight is dangerous.

"SB 820 would expand the authority of county jails to administer involuntary psychiatric medications in general population units rather than in clinical settings. Administering such medications without proper oversight can have fatal consequences. Antipsychotic medications, for example, carry a black box warning because they can be lethal for individuals with dementia-related psychosis. Determining the underlying cause of psychosis is particularly challenging in jail settings, where correctional officers often lack the necessary training to recognize medication side effects. Moreover, incarcerated individuals may have limited ability to report concerns to medical staff.

"Individuals administered involuntary medication are under close observation in clinical settings. Designated behavioral health treatment centers maintain 24-hour clinical staff who conduct regular rounds and closely monitor patients. Under existing law, many individuals subject to involuntary medication in county jails are taken to designated mental health Correctional Treatment Centers (CTCs). CTCs have similar requirements for staffing ratios, staff licensure, treatment planning, and discharge planning as designated behavioral health treatment centers in the community. SB 820 would allow jails to involuntary medicate individuals without transferring them to designated behavioral health treatment centers or CTC units. By expanding the ability of county jails to administer involuntary medications outside clinical settings, SB 820 undermines existing safeguards and increases the risk of serious harm or death.

II. SB 820 will incentivize counties to hold individuals in jail for treatment, backsliding efforts to divert people with serious mental illness from jail.

"Individuals with serious mental illness quickly deteriorate in jail and are at heightened risk of abuse and neglect. State and local efforts are underway to divert individuals with mental illness from jail and provide treatment in the community. By creating a new mechanism for involuntary medication orders, SB 820 risks incentivizing counties to rely on jails for mental health treatment rather than investing in community-based care."

8) **Related Legislation**: SB 27 (Umberg) would make various changes to the misdemeanor IST statute including authorizing CARE court to be considered at an earlier stage in proceedings. SB 27 is pending hearing in the Assembly Judiciary Committee.

9) **Prior Legislation**:

a) SB 1317 (Wahab), Chapter 326, Statutes of 2024, extended the sunset date until January 1, 2030 on provisions of law authorizing involuntary medication of county jail inmates who are awaiting arraignment, trial or sentencing and required counties implementing the law to report specified information to the Legislature.

b) SB 1400 (Stern), Chapter 647, Statutes of 2024, removes, for misdemeanor IST proceedings, the option for the court to dismiss the case and would instead require the court to hold a hearing to determine if the defendant is eligible for diversion.

c) SB 827 (Committee on Public Safety), Chapter 434, Statutes of 2021, as relevant to this bill, extended the sunset date on provisions of law authorizing involuntary medication of a person in county jail awaiting arraignment, trial, or sentencing until January 1, 2025, and required counties to report specified information regarding the law's implementation to the Legislature.

d) SB 317 (Stern), Chapter 599, Statutes of 2021, made various changes to the misdemeanor IST statute including removing court authorization for involuntary medication orders.

e) AB 720 (Eggman), Chapter 347, Statutes of 2017, authorized, until January 1, 2022, involuntary medication of a person in county jail awaiting arraignment, trial, or sentencing and required counties to report specified information regarding the law's implementation to the Legislature.

f) AB 1907 (B. Lowenthal), Chapter 814, Statutes of 2012, created the involuntary medication statute for sentenced county jail inmates.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Psychiatrists (CSAP) (Sponsor)
Alameda County Families Advocating for the Seriously Mentally Ill
California Big City Mayors Coalition
California Medical Association (CMA)
California State Sheriffs' Association
City of San Diego
Family Advocates for Individuals With Serious Mental Illness (FAISMI) of Sacramento
National Alliance on Mental Illness (NAMI-CA)
Steinberg Institute
Treatment Advocacy Center

Opposition

ACLU California Action (unless amended)
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association (unless amended)
Cal Voices
California Peer Watch
Courage California (unless amended)
Disability Rights California (unless amended)
Initiate Justice
Justice2jobs Coalition (unless amended)

LA Defensa

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744