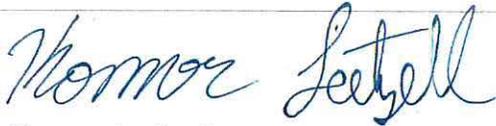


MEMORANDUM

DATE	April 10, 2017
TO	Board of Psychology
FROM	 Konnor Leitzell Central Services Student Assistant
SUBJECT	Agenda Item #4(b)(1)(B)(40) – SB 684 (Bates) Incompetence to Stand Trial: Conservatorship

Background:

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. This bill would allow the initiation of conservatorship proceedings for defendants that have been charged with a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person, if the defendant is gravely disabled due to a condition in which the person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter. If the defendant were determined to be ineligible for conservatorship, this bill would also require the county mental health director to refer the defendant to the local mental health department, and would require the department to provide the defendant with an opportunity to participate in a mental health treatment plan.

Location: Senate Public Safety Committee

Status: 03/09/2017 Referred to Senate Committee on Public Safety

Action Requested:

No action is required at this time. Staff will continue to watch SB 684 (Bates) to follow how these changes broaden the definition of incompetence, impact the existing conservatorship process, and place considerable strain on the mental health providers and resources available to treat incompetent inmates at facilities operated by the Department of State Hospitals and California Department of Corrections.

Introduced by Senator BatesFebruary 17, 2017

An act to amend Sections 1368.1 and 1370 of the Penal Code, and to amend Section 5008 of the Welfare and Institutions Code, relating to criminal trial.

LEGISLATIVE COUNSEL'S DIGEST

SB 684, as introduced, Bates. Incompetence to stand trial: conservatorship: treatment.

(1) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment with the goal of returning the defendant to competency. Existing law allows a mentally incompetent defendant to be committed to the State Department of State Hospitals or other public or private treatment facility for a period of 3 years or to a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged, whichever is shorter, and requires the defendant to be returned to the committing court after his or her maximum period of commitment. If the defendant is gravely disabled upon his or her return to the committing court, existing law requires the court to order the conservatorship investigator of the county to initiate conservatorship proceedings on the basis that the indictment or information pending against the person charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

This bill would also allow the initiation of conservatorship proceedings on the basis that person is gravely disabled due to a condition in which the person, as a result of a mental health disorder,

is unable to provide for his or her basic personal needs for food, clothing, or shelter.

If the defendant has been charged with a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person and is determined to be ineligible for conservatorship, the bill would require the county mental health director to refer the defendant to the local mental health department, and would require the department to provide the defendant with an opportunity to participate in a mental health treatment plan. By increasing the duties on local agencies, this bill would impose a state-mandated local program.

The bill would specify requirements for the calculation of custody credits earned prior to commitment in calculating the maximum term of commitment.

(2) Existing law requires, if the action is on a complaint charging a felony, that a proceeding to determine mental competence be held prior to the filing of an information unless counsel for the defendant requests a preliminary examination. Existing law requires an indictment or information to be pending against the defendant at the time a conservatorship is initiated.

This bill would allow, if the action is on a complaint charging a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person, the prosecuting attorney, at any time before or after a defendant is determined incompetent to stand trial, to request a determination of probable cause to believe the defendant committed the offense or offenses alleged in the complaint. The bill would allow for the initiation of a conservatorship upon a criminal complaint if there has been a finding of probable cause on the complaint.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368.1 of the Penal Code is amended to
2 read:

3 1368.1. (a) *If (1) Except as specified in paragraph (2), if the*
4 *action is on a complaint charging a felony, proceedings to*
5 *determine mental competence shall be held prior to the filing of*
6 *an information unless the counsel for the defendant requests a*
7 *preliminary examination under the provisions of Section 859b. At*
8 *such the preliminary examination, counsel for the defendant may*
9 *(1) demur, (2) move to dismiss the complaint on the ground that*
10 *there is not reasonable cause to believe that a felony has been*
11 *committed and that the defendant is guilty thereof, or (3) make a*
12 *motion under Section 1538.5.*

13 *(2) If the action is on a complaint charging a felony involving*
14 *death, great bodily harm, or a serious threat to the physical*
15 *well-being of another person, the prosecuting attorney may, at*
16 *any time before or after a defendant is determined incompetent to*
17 *stand trial, request a determination of probable cause to believe*
18 *the defendant committed the offense or offenses alleged in the*
19 *complaint, as required for a conservatorship pursuant to*
20 *paragraph (1) of subdivision (h) of Section 5008 of the Welfare*
21 *and Institutions Code, pursuant to procedures approved by the*
22 *court.*

23 (b) If the action is on a complaint charging a misdemeanor,
24 counsel for the defendant may (1) demur, (2) move to dismiss the
25 complaint on the ground that there is not reasonable cause to
26 believe that a public offense has been committed and that the
27 defendant is guilty thereof, or (3) make a motion under Section
28 1538.5.

29 (c) If the proceeding involves an alleged violation of probation,
30 mandatory supervision, postrelease community supervision, or
31 parole, counsel for the defendant may move to reinstate supervision
32 on the ground that there is not probable cause to believe that the
33 defendant violated the terms of his or her supervision.

34 (d) In ruling upon any demurrer or motion described in
35 subdivision (a), (b), or (c), the court may hear any matter which
36 is capable of fair determination without the personal participation
37 of the defendant.

1 (e) A demurrer or motion described in subdivision (a), (b), or
2 (c) shall be made in the court having jurisdiction over the
3 complaint. The defendant shall not be certified until the demurrer
4 or motion has been decided.

5 SEC. 2. Section 1370 of the Penal Code is amended to read:

6 1370. (a) (1) (A) If the defendant is found mentally
7 competent, the criminal process shall resume, the trial on the
8 offense charged or hearing on the alleged violation shall proceed,
9 and judgment may be pronounced.

10 (B) If the defendant is found mentally incompetent, the trial,
11 the hearing on the alleged violation, or the judgment shall be
12 suspended until the person becomes mentally competent.

13 (i) In the meantime, the court shall order that the mentally
14 incompetent defendant be delivered by the sheriff to a state hospital
15 for the care and treatment of the mentally disordered, as directed
16 by the State Department of State Hospitals, or to any other available
17 public or private treatment facility, including a county jail treatment
18 facility or the community-based residential treatment system
19 established pursuant to Article 1 (commencing with Section 5670)
20 of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
21 Institutions Code if the facility has a secured perimeter or a locked
22 and controlled treatment facility, approved by the community
23 program director that will promote the defendant's speedy
24 restoration to mental competence, or placed on outpatient status
25 as specified in Section 1600.

26 (ii) However, if the action against the defendant who has been
27 found mentally incompetent is on a complaint charging a felony
28 offense specified in Section 290, the prosecutor shall determine
29 whether the defendant previously has been found mentally
30 incompetent to stand trial pursuant to this chapter on a charge of
31 a Section 290 offense, or whether the defendant is currently the
32 subject of a pending Section 1368 proceeding arising out of a
33 charge of a Section 290 offense. If either determination is made,
34 the prosecutor shall so notify the court and defendant in writing.
35 After this notification, and opportunity for hearing, the court shall
36 order that the defendant be delivered by the sheriff to a state
37 hospital, as directed by the State Department of State Hospitals,
38 or other secure treatment facility for the care and treatment of the
39 mentally disordered unless the court makes specific findings on
40 the record that an alternative placement would provide more

1 appropriate treatment for the defendant and would not pose a
2 danger to the health and safety of others.

3 (iii) If the action against the defendant who has been found
4 mentally incompetent is on a complaint charging a felony offense
5 specified in Section 290 and the defendant has been denied bail
6 pursuant to subdivision (b) of Section 12 of Article I of the
7 California Constitution because the court has found, based upon
8 clear and convincing evidence, a substantial likelihood that the
9 person's release would result in great bodily harm to others, the
10 court shall order that the defendant be delivered by the sheriff to
11 a state hospital for the care and treatment of the mentally
12 disordered, as directed by the State Department of State Hospitals,
13 unless the court makes specific findings on the record that an
14 alternative placement would provide more appropriate treatment
15 for the defendant and would not pose a danger to the health and
16 safety of others.

17 (iv) The clerk of the court shall notify the Department of Justice
18 in writing of a finding of mental incompetence with respect to a
19 defendant who is subject to clause (ii) or (iii) for inclusion in his
20 or her state summary criminal history information.

21 (C) Upon the filing of a certificate of restoration to competence,
22 the court shall order that the defendant be returned to court in
23 accordance with Section 1372. The court shall transmit a copy of
24 its order to the community program director or a designee.

25 (D) A defendant charged with a violent felony may not be
26 delivered to a state hospital or treatment facility pursuant to this
27 subdivision unless the state hospital or treatment facility has a
28 secured perimeter or a locked and controlled treatment facility,
29 and the judge determines that the public safety will be protected.

30 (E) For purposes of this paragraph, "violent felony" means an
31 offense specified in subdivision (c) of Section 667.5.

32 (F) A defendant charged with a violent felony may be placed
33 on outpatient status, as specified in Section 1600, only if the court
34 finds that the placement will not pose a danger to the health or
35 safety of others. If the court places a defendant charged with a
36 violent felony on outpatient status, as specified in Section 1600,
37 the court shall serve copies of the placement order on defense
38 counsel, the sheriff in the county where the defendant will be
39 placed, and the district attorney for the county in which the violent
40 felony charges are pending against the defendant.

1 (2) Prior to making the order directing that the defendant be
2 committed to the State Department of State Hospitals or other
3 treatment facility or placed on outpatient status, the court shall
4 proceed as follows:

5 (A) The court shall order the community program director or a
6 designee to evaluate the defendant and to submit to the court within
7 15 judicial days of the order a written recommendation as to
8 whether the defendant should be required to undergo outpatient
9 treatment, or be committed to the State Department of State
10 Hospitals or to any other treatment facility. A person shall not be
11 admitted to a state hospital or other treatment facility or placed on
12 outpatient status under this section without having been evaluated
13 by the community program director or a designee. The community
14 program director or designee shall evaluate the appropriate
15 placement for the defendant between the State Department of State
16 Hospitals, a county jail treatment facility, or the community-based
17 residential treatment system based upon guidelines provided by
18 the State Department of State Hospitals.

19 (B) The court shall hear and determine whether the defendant
20 lacks capacity to make decisions regarding the administration of
21 antipsychotic medication. The court shall consider opinions in the
22 reports prepared pursuant to subdivision (a) of Section 1369, as
23 applicable to the issue of whether the defendant lacks capacity to
24 make decisions regarding the administration of antipsychotic
25 medication, and shall proceed as follows:

26 (i) The court shall hear and determine whether any of the
27 following is true:

28 (I) The defendant lacks capacity to make decisions regarding
29 antipsychotic medication, the defendant's mental disorder requires
30 medical treatment with antipsychotic medication, and, if the
31 defendant's mental disorder is not treated with antipsychotic
32 medication, it is probable that serious harm to the physical or
33 mental health of the patient will result. Probability of serious harm
34 to the physical or mental health of the defendant requires evidence
35 that the defendant is presently suffering adverse effects to his or
36 her physical or mental health, or the defendant has previously
37 suffered these effects as a result of a mental disorder and his or
38 her condition is substantially deteriorating. The fact that a
39 defendant has a diagnosis of a mental disorder does not alone

1 establish probability of serious harm to the physical or mental
2 health of the defendant.

3 (II) The defendant is a danger to others, in that the defendant
4 has inflicted, attempted to inflict, or made a serious threat of
5 inflicting substantial physical harm on another while in custody,
6 or the defendant had inflicted, attempted to inflict, or made a
7 serious threat of inflicting substantial physical harm on another
8 that resulted in his or her being taken into custody, and the
9 defendant presents, as a result of mental disorder or mental defect,
10 a demonstrated danger of inflicting substantial physical harm on
11 others. Demonstrated danger may be based on an assessment of
12 the defendant's present mental condition, including a consideration
13 of past behavior of the defendant within six years prior to the time
14 the defendant last attempted to inflict, inflicted, or threatened to
15 inflict substantial physical harm on another, and other relevant
16 evidence.

17 (III) The people have charged the defendant with a serious crime
18 against the person or property, involuntary administration of
19 antipsychotic medication is substantially likely to render the
20 defendant competent to stand trial, the medication is unlikely to
21 have side effects that interfere with the defendant's ability to
22 understand the nature of the criminal proceedings or to assist
23 counsel in the conduct of a defense in a reasonable manner, less
24 intrusive treatments are unlikely to have substantially the same
25 results, and antipsychotic medication is in the patient's best medical
26 interest in light of his or her medical condition.

27 (ii) If the court finds any of the conditions described in clause
28 (i) to be true, the court shall issue an order authorizing involuntary
29 administration of antipsychotic medication to the defendant when
30 and as prescribed by the defendant's treating psychiatrist at any
31 facility housing the defendant for purposes of this chapter. The
32 order shall be valid for no more than one year, pursuant to
33 subparagraph (A) of paragraph (7). The court shall not order
34 involuntary administration of psychotropic medication under
35 subclause (III) of clause (i) unless the court has first found that the
36 defendant does not meet the criteria for involuntary administration
37 of psychotropic medication under subclause (I) of clause (i) and
38 does not meet the criteria under subclause (II) of clause (i).

39 (iii) In all cases, the treating hospital, facility, or program may
40 administer medically appropriate antipsychotic medication

1 prescribed by a psychiatrist in an emergency as described in
2 subdivision (m) of Section 5008 of the Welfare and Institutions
3 Code.

4 (iv) If the court has determined that the defendant has the
5 capacity to make decisions regarding antipsychotic medication,
6 and if the defendant, with advice of his or her counsel, consents,
7 the court order of commitment shall include confirmation that
8 antipsychotic medication may be given to the defendant as
9 prescribed by a treating psychiatrist pursuant to the defendant's
10 consent. The commitment order shall also indicate that, if the
11 defendant withdraws consent for antipsychotic medication, after
12 the treating psychiatrist complies with the provisions of
13 subparagraph (C), the defendant shall be returned to court for a
14 hearing in accordance with subparagraphs (C) and (D) regarding
15 whether antipsychotic medication shall be administered
16 involuntarily.

17 (v) If the court has determined that the defendant has the
18 capacity to make decisions regarding antipsychotic medication
19 and if the defendant, with advice from his or her counsel, does not
20 consent, the court order for commitment shall indicate that, after
21 the treating psychiatrist complies with the provisions of
22 subparagraph (C), the defendant shall be returned to court for a
23 hearing in accordance with subparagraphs (C) and (D) regarding
24 whether antipsychotic medication shall be administered
25 involuntarily.

26 (vi) A report made pursuant to paragraph (1) of subdivision (b)
27 shall include a description of antipsychotic medication administered
28 to the defendant and its effects and side effects, including effects
29 on the defendant's appearance or behavior that would affect the
30 defendant's ability to understand the nature of the criminal
31 proceedings or to assist counsel in the conduct of a defense in a
32 reasonable manner. During the time the defendant is confined in
33 a state hospital or other treatment facility or placed on outpatient
34 status, either the defendant or the people may request that the court
35 review any order made pursuant to this subdivision. The defendant,
36 to the same extent enjoyed by other patients in the state hospital
37 or other treatment facility, shall have the right to contact the
38 patients' rights advocate regarding his or her rights under this
39 section.

1 (C) If the defendant consented to antipsychotic medication as
2 described in clause (iv) of subparagraph (B), but subsequently
3 withdraws his or her consent, or, if involuntary antipsychotic
4 medication was not ordered pursuant to clause (v) of subparagraph
5 (B), and the treating psychiatrist determines that antipsychotic
6 medication has become medically necessary and appropriate, the
7 treating psychiatrist shall make efforts to obtain informed consent
8 from the defendant for antipsychotic medication. If informed
9 consent is not obtained from the defendant, and the treating
10 psychiatrist is of the opinion that the defendant lacks capacity to
11 make decisions regarding antipsychotic medication based on the
12 conditions described in subclause (I) or (II) of clause (i) of
13 subparagraph (B), the treating psychiatrist shall certify whether
14 the lack of capacity and any applicable conditions described above
15 exist. That certification shall contain an assessment of the current
16 mental status of the defendant and the opinion of the treating
17 psychiatrist that involuntary antipsychotic medication has become
18 medically necessary and appropriate.

19 (D) (i) If the treating psychiatrist certifies that antipsychotic
20 medication has become medically necessary and appropriate
21 pursuant to subparagraph (C), antipsychotic medication may be
22 administered to the defendant for not more than 21 days, provided,
23 however, that, within 72 hours of the certification, the defendant
24 is provided a medication review hearing before an administrative
25 law judge to be conducted at the facility where the defendant is
26 receiving treatment. The treating psychiatrist shall present the case
27 for the certification for involuntary treatment and the defendant
28 shall be represented by an attorney or a patients' rights advocate.
29 The attorney or patients' rights advocate shall be appointed to meet
30 with the defendant no later than one day prior to the medication
31 review hearing to review the defendant's rights at the medication
32 review hearing, discuss the process, answer questions or concerns
33 regarding involuntary medication or the hearing, assist the
34 defendant in preparing for the hearing and advocating for his or
35 her interests at the hearing, review the panel's final determination
36 following the hearing, advise the defendant of his or her right to
37 judicial review of the panel's decision, and provide the defendant
38 with referral information for legal advice on the subject. The
39 defendant shall also have the following rights with respect to the
40 medication review hearing:

- 1 (I) To be given timely access to the defendant's records.
2 (II) To be present at the hearing, unless the defendant waives
3 that right.
4 (III) To present evidence at the hearing.
5 (IV) To question persons presenting evidence supporting
6 involuntary medication.
7 (V) To make reasonable requests for attendance of witnesses
8 on the defendant's behalf.
9 (VI) To a hearing conducted in an impartial and informal
10 manner.
11 (ii) If the administrative law judge determines that the defendant
12 either meets the criteria specified in subclause (I) of clause (i) of
13 subparagraph (B), or meets the criteria specified in subclause (II)
14 of clause (i) of subparagraph (B), then antipsychotic medication
15 may continue to be administered to the defendant for the 21-day
16 certification period. Concurrently with the treating psychiatrist's
17 certification, the treating psychiatrist shall file a copy of the
18 certification and a petition with the court for issuance of an order
19 to administer antipsychotic medication beyond the 21-day
20 certification period. For purposes of this subparagraph, the treating
21 psychiatrist shall not be required to pay or deposit any fee for the
22 filing of the petition or other document or paper related to the
23 petition.
24 (iii) If the administrative law judge disagrees with the
25 certification, medication may not be administered involuntarily
26 until the court determines that antipsychotic medication should be
27 administered pursuant to this section.
28 (iv) The court shall provide notice to the prosecuting attorney
29 and to the attorney representing the defendant, and shall hold a
30 hearing, no later than 18 days from the date of the certification, to
31 determine whether antipsychotic medication should be ordered
32 beyond the certification period.
33 (v) If, as a result of the hearing, the court determines that
34 antipsychotic medication should be administered beyond the
35 certification period, the court shall issue an order authorizing the
36 administration of that medication.
37 (vi) The court shall render its decision on the petition and issue
38 its order no later than three calendar days after the hearing and, in
39 any event, no later than the expiration of the 21-day certification
40 period.

1 (vii) If the administrative law judge upholds the certification
2 pursuant to clause (ii), the court may, for a period not to exceed
3 14 days, extend the certification and continue the hearing pursuant
4 to stipulation between the parties or upon a finding of good cause.
5 In determining good cause, the court may review the petition filed
6 with the court, the administrative law judge's order, and any
7 additional testimony needed by the court to determine if it is
8 appropriate to continue medication beyond the 21-day certification
9 and for a period of up to 14 days.

10 (viii) The district attorney, county counsel, or representative of
11 a facility where a defendant found incompetent to stand trial is
12 committed may petition the court for an order to administer
13 involuntary medication pursuant to the criteria set forth in
14 subclauses (II) and (III) of clause (i) of subparagraph (B). The
15 order is reviewable as provided in paragraph (7).

16 (3) When the court orders that the defendant be committed to
17 the State Department of State Hospitals or other public or private
18 treatment facility, the court shall provide copies of the following
19 documents prior to the admission of the defendant to the State
20 Department of State Hospitals or other treatment facility where
21 the defendant is to be committed:

22 (A) The commitment order, including a specification of the
23 charges.

24 (B) A computation or statement setting forth the maximum term
25 of commitment in accordance with subdivision (c).

26 (C) A computation or statement setting forth the amount of
27 credit for time served, if any, to be deducted from the maximum
28 term of ~~commitment~~ *commitment, to be determined as follows:*

29 *(i) A defendant charged with a crime for which the maximum*
30 *term of imprisonment provided by law for the most serious offense*
31 *charged or the maximum term of imprisonment provided by law*
32 *for a violation of probation or mandatory supervision is greater*
33 *than three years shall begin to accrue credit toward the three-year*
34 *maximum commitment on the date of the commitment order.*

35 *(ii) A defendant charged with a crime for which the maximum*
36 *term of imprisonment provided by law for the most serious offense*
37 *charged or the maximum term of imprisonment provided by law*
38 *for a violation of probation or mandatory supervision is three*
39 *years or less shall begin to accrue credit toward the maximum*

1 *term of commitment on the date of the commitment order and is*
2 *also entitled to credit for custody prior to commitment.*

3 *(iii) A defendant shall cease to accrue credit toward his or her*
4 *maximum term of commitment upon the filing of a certificate of*
5 *restoration of competency pursuant to subdivision (a) of Section*
6 *1372.*

7 *(iv) A defendant shall continue to accumulate credit toward the*
8 *maximum term of commitment on a subsequent finding of*
9 *incompetency on the same case or a refiling of the case involving*
10 *the same criminal offense.*

11 (D) State summary criminal history information.

12 (E) Arrest reports prepared by the police department or other
13 law enforcement agency.

14 (F) Court-ordered psychiatric examination or evaluation reports.

15 (G) The community program director's placement
16 recommendation report.

17 (H) Records of a finding of mental incompetence pursuant to
18 this chapter arising out of a complaint charging a felony offense
19 specified in Section 290 or a pending Section 1368 proceeding
20 arising out of a charge of a Section 290 offense.

21 (I) Medical records.

22 (4) When the defendant is committed to a treatment facility
23 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
24 court makes the findings specified in clause (ii) or (iii) of
25 subparagraph (B) of paragraph (1) to assign the defendant to a
26 treatment facility other than a state hospital or other secure
27 treatment facility, the court shall order that notice be given to the
28 appropriate law enforcement agency or agencies having local
29 jurisdiction at the site of the placement facility of any finding of
30 mental incompetence pursuant to this chapter arising out of a
31 charge of a Section 290 offense.

32 (5) When directing that the defendant be confined in a state
33 hospital pursuant to this subdivision, the court shall commit the
34 patient to the State Department of State Hospitals.

35 (6) (A) If the defendant is committed or transferred to the State
36 Department of State Hospitals pursuant to this section, the court
37 may, upon receiving the written recommendation of the medical
38 director of the state hospital and the community program director
39 that the defendant be transferred to a public or private treatment
40 facility approved by the community program director, order the

1 defendant transferred to that facility. If the defendant is committed
2 or transferred to a public or private treatment facility approved by
3 the community program director, the court may, upon receiving
4 the written recommendation of the community program director,
5 transfer the defendant to the State Department of State Hospitals
6 or to another public or private treatment facility approved by the
7 community program director. In the event of dismissal of the
8 criminal charges before the defendant recovers competence, the
9 person shall be subject to the applicable provisions of the
10 Lanterman-Petris-Short Act (Part 1 (commencing with Section
11 5000) of Division 5 of the Welfare and Institutions Code). If either
12 the defendant or the prosecutor chooses to contest either kind of
13 order of transfer, a petition may be filed in the court for a hearing,
14 which shall be held if the court determines that sufficient grounds
15 exist. At the hearing, the prosecuting attorney or the defendant
16 may present evidence bearing on the order of transfer. The court
17 shall use the same standards as are used in conducting probation
18 revocation hearings pursuant to Section 1203.2.

19 Prior to making an order for transfer under this section, the court
20 shall notify the defendant, the attorney of record for the defendant,
21 the prosecuting attorney, and the community program director or
22 a designee.

23 (B) If the defendant is initially committed to the State
24 Department of State Hospitals or secure treatment facility pursuant
25 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
26 subsequently transferred to any other facility, copies of the
27 documents specified in paragraph (3) shall be taken with the
28 defendant to each subsequent facility to which the defendant is
29 transferred. The transferring facility shall also notify the appropriate
30 law enforcement agency or agencies having local jurisdiction at
31 the site of the new facility that the defendant is a person subject
32 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

33 (7) (A) An order by the court authorizing involuntary
34 medication of the defendant shall be valid for no more than one
35 year. The court shall review the order at the time of the review of
36 the initial report and the six-month progress reports pursuant to
37 paragraph (1) of subdivision (b) to determine if the grounds for
38 the authorization remain. In the review, the court shall consider
39 the reports of the treating psychiatrist or psychiatrists and the
40 defendant's patients' rights advocate or attorney. The court may

1 require testimony from the treating psychiatrist and the patients'
2 rights advocate or attorney, if necessary. The court may continue
3 the order authorizing involuntary medication for up to another six
4 months, or vacate the order, or make any other appropriate order.

5 (B) Within 60 days before the expiration of the one-year
6 involuntary medication order, the district attorney, county counsel,
7 or representative of any facility where a defendant found
8 incompetent to stand trial is committed may petition the committing
9 court for a renewal, subject to the same conditions and
10 requirements as in subparagraph (A). The petition shall include
11 the basis for involuntary medication set forth in clause (i) of
12 subparagraph (B) of paragraph (2). Notice of the petition shall be
13 provided to the defendant, the defendant's attorney, and the district
14 attorney. The court shall hear and determine whether the defendant
15 continues to meet the criteria set forth in clause (i) of subparagraph
16 (B) of paragraph (2). The hearing on any petition to renew an order
17 for involuntary medication shall be conducted prior to the
18 expiration of the current order.

19 (8) For purposes of subparagraph (D) of paragraph (2) and
20 paragraph (7), if the treating psychiatrist determines that there is
21 a need, based on preserving his or her rapport with the patient or
22 preventing harm, the treating psychiatrist may request that the
23 facility medical director designate another psychiatrist to act in
24 the place of the treating psychiatrist. If the medical director of the
25 facility designates another psychiatrist to act pursuant to this
26 paragraph, the treating psychiatrist shall brief the acting psychiatrist
27 of the relevant facts of the case and the acting psychiatrist shall
28 examine the patient prior to the hearing.

29 (b) (1) Within 90 days of a commitment made pursuant to
30 subdivision (a), the medical director of the state hospital or other
31 treatment facility to which the defendant is confined shall make a
32 written report to the court and the community program director
33 for the county or region of commitment, or a designee, concerning
34 the defendant's progress toward recovery of mental competence
35 and whether the administration of antipsychotic medication remains
36 necessary. If the defendant is on outpatient status, the outpatient
37 treatment staff shall make a written report to the community
38 program director concerning the defendant's progress toward
39 recovery of mental competence. Within 90 days of placement on
40 outpatient status, the community program director shall report to

1 the court on this matter. If the defendant has not recovered mental
2 competence, but the report discloses a substantial likelihood that
3 the defendant will regain mental competence in the foreseeable
4 future, the defendant shall remain in the state hospital or other
5 treatment facility or on outpatient status. Thereafter, at six-month
6 intervals or until the defendant becomes mentally competent, if
7 the defendant is confined in a treatment facility, the medical
8 director of the hospital or person in charge of the facility shall
9 report in writing to the court and the community program director
10 or a designee regarding the defendant's progress toward recovery
11 of mental competence and whether the administration of
12 antipsychotic medication remains necessary. If the defendant is
13 on outpatient status, after the initial 90-day report, the outpatient
14 treatment staff shall report to the community program director on
15 the defendant's progress toward recovery, and the community
16 program director shall report to the court on this matter at
17 six-month intervals. A copy of these reports shall be provided to
18 the prosecutor and defense counsel by the court.

19 (A) If the report indicates that there is no substantial likelihood
20 that the defendant will regain mental competence in the foreseeable
21 future, the committing court shall order the defendant to be returned
22 to the court for proceedings pursuant to paragraph (2) of
23 subdivision (c) no later than 10 days following receipt of the report.
24 The court shall transmit a copy of its order to the community
25 program director or a designee.

26 (B) If the report indicates that there is no substantial likelihood
27 that the defendant will regain mental competence in the foreseeable
28 future, the medical director of the state hospital or other treatment
29 facility to which the defendant is confined shall do both of the
30 following:

31 (i) Promptly notify and provide a copy of the report to the
32 defense counsel and the district attorney.

33 (ii) Provide a separate notification, in compliance with
34 applicable privacy laws, to the committing county's sheriff that
35 transportation will be needed for the patient.

36 (2) If the court has issued an order authorizing the treating
37 facility to involuntarily administer antipsychotic medication to the
38 defendant, the reports made pursuant to paragraph (1) concerning
39 the defendant's progress toward regaining competency shall also

1 consider the issue of involuntary medication. Each report shall
2 include, but is not limited to, all of the following:

3 (A) Whether or not the defendant has the capacity to make
4 decisions concerning antipsychotic medication.

5 (B) If the defendant lacks capacity to make decisions concerning
6 antipsychotic medication, whether the defendant risks serious harm
7 to his or her physical or mental health if not treated with
8 antipsychotic medication.

9 (C) Whether or not the defendant presents a danger to others if
10 he or she is not treated with antipsychotic medication.

11 (D) Whether the defendant has a mental illness for which
12 medications are the only effective treatment.

13 (E) Whether there are any side effects from the medication
14 currently being experienced by the defendant that would interfere
15 with the defendant's ability to collaborate with counsel.

16 (F) Whether there are any effective alternatives to medication.

17 (G) How quickly the medication is likely to bring the defendant
18 to competency.

19 (H) Whether the treatment plan includes methods other than
20 medication to restore the defendant to competency.

21 (I) A statement, if applicable, that no medication is likely to
22 restore the defendant to competency.

23 (3) After reviewing the reports, the court shall determine whether
24 or not grounds for the order authorizing involuntary administration
25 of antipsychotic medication still exist and shall do one of the
26 following:

27 (A) If the original grounds for involuntary medication still exist,
28 the order authorizing the treating facility to involuntarily administer
29 antipsychotic medication to the defendant shall remain in effect.

30 (B) If the original grounds for involuntary medication no longer
31 exist, and there is no other basis for involuntary administration of
32 antipsychotic medication, the order for the involuntary
33 administration of antipsychotic medication shall be vacated.

34 (C) If the original grounds for involuntary medication no longer
35 exist, and the report states that there is another basis for involuntary
36 administration of antipsychotic medication, the court shall set a
37 hearing within 21 days to determine whether the order for the
38 involuntary administration of antipsychotic medication shall be
39 vacated or whether a new order for the involuntary administration
40 of antipsychotic medication shall be issued. The hearing shall

1 proceed as set forth in subparagraph (B) of paragraph (2) of
2 subdivision (a).

3 (4) Any defendant who has been committed or has been on
4 outpatient status for 18 months and is still hospitalized or on
5 outpatient status shall be returned to the committing court where
6 a hearing shall be held pursuant to the procedures set forth in
7 Section 1369. The court shall transmit a copy of its order to the
8 community program director or a designee.

9 (5) If it is determined by the court that no treatment for the
10 defendant's mental impairment is being conducted, the defendant
11 shall be returned to the committing court. The court shall transmit
12 a copy of its order to the community program director or a
13 designee.

14 (6) At each review by the court specified in this subdivision,
15 the court shall determine if the security level of housing and
16 treatment is appropriate and may make an order in accordance
17 with its determination. If the court determines that the defendant
18 shall continue to be treated in the state hospital or on an outpatient
19 basis, the court shall determine issues concerning administration
20 of antipsychotic medication, as set forth in subparagraph (B) of
21 paragraph (2) of subdivision (a).

22 (c) (1) At the end of three years from the date of commitment
23 or a period of commitment equal to the maximum term of
24 imprisonment provided by law for the most serious offense charged
25 in the information, indictment, or misdemeanor complaint, or the
26 maximum term of imprisonment provided by law for a violation
27 of probation or mandatory supervision, whichever is shorter, but
28 no later than 90 days prior to the expiration of the defendant's term
29 of commitment, a defendant who has not recovered mental
30 competence shall be returned to the committing court. The court
31 shall notify the community program director or a designee of the
32 return and of any resulting court orders.

33 (2) Whenever a defendant is returned to the court pursuant to
34 paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
35 subdivision and it appears to the court that the defendant is gravely
36 disabled, as defined in subparagraph (A) or (B) of paragraph (1)
37 of subdivision (h) of Section 5008 of the Welfare and Institutions
38 Code, the court shall order the conservatorship investigator of the
39 county of commitment of the defendant to initiate conservatorship
40 proceedings for the defendant pursuant to Chapter 3 (commencing

1 with Section 5350) of Part 1 of Division 5 of the Welfare and
2 Institutions Code. Hearings required in the conservatorship
3 proceedings shall be held in the superior court in the county that
4 ordered the commitment. The court shall transmit a copy of the
5 order directing initiation of conservatorship proceedings to the
6 community program director or a designee, the sheriff and the
7 district attorney of the county in which criminal charges are
8 pending, and the defendant's counsel of record. The court shall
9 notify the community program director or a designee, the sheriff
10 and district attorney of the county in which criminal charges are
11 pending, and the defendant's counsel of record of the outcome of
12 the conservatorship proceedings.

13 (3) If a change in placement is proposed for a defendant who
14 is committed pursuant to subparagraph (A) or (B) of paragraph (1)
15 of subdivision (h) of Section 5008 of the Welfare and Institutions
16 Code, the court shall provide notice and an opportunity to be heard
17 with respect to the proposed placement of the defendant to the
18 sheriff and the district attorney of the county in which the criminal
19 charges or revocation proceedings are pending.

20 (4) If the defendant is confined in a treatment facility, a copy
21 of any report to the committing court regarding the defendant's
22 progress toward recovery of mental competence shall be provided
23 by the committing court to the prosecutor and to the defense
24 counsel.

25 (5) *If the defendant has been charged with a felony involving*
26 *death, great bodily harm, or serious threat to the physical*
27 *well-being of another person and is returned to court pursuant to*
28 *paragraph (1) or (4) of subdivision (b) or paragraph (1) and is*
29 *determined to be ineligible for conservatorship pursuant to*
30 *subparagraph (A) or (B) of paragraph (1) of subdivision (h) of*
31 *Section 5008 of the Welfare and Institutions Code, both of the*
32 *following shall apply:*

33 (A) (i) *The county mental health director, or his or her designee,*
34 *shall, pending the defendant's release from confinement, refer the*
35 *defendant to the local mental health department, which shall*
36 *provide the defendant with an opportunity to participate in a mental*
37 *health treatment plan.*

38 (ii) *Within 60 days of the referral, the county mental health*
39 *director, or his or her designee, shall file a report to the court*
40 *indicating the mental health treatment provider to whom the*

1 *defendant was referred and whether the defendant has agreed to*
2 *cooperate with the proposed treatment plan.*

3 *(iii) The county mental health director, or his or her designee,*
4 *shall annually report changes in the treatment status and*
5 *competency status of the defendant, if any, to the court, the*
6 *prosecutor, and the defense counsel.*

7 *(B) (i) The court may, on its own motion, or pursuant to a*
8 *petition of the prosecutor or defense counsel, order a competence*
9 *examination, hold a status hearing, or order the county mental*
10 *health director to reinstate a conservatorship investigation on*
11 *any defendant released from confinement pursuant to this*
12 *paragraph at any time, based on new information. At a hearing*
13 *held pursuant to this paragraph, the court may order an*
14 *examination to be conducted by a court-appointed psychiatrist,*
15 *licensed psychologist, or any other expert the court deems*
16 *appropriate, of whether the defendant's mental competence to*
17 *stand trial has been restored.*

18 *(ii) If after a hearing conducted pursuant to this subparagraph,*
19 *the examining mental health expert determines that the defendant*
20 *has regained mental competence, the expert shall immediately*
21 *certify that fact to the court for further proceedings pursuant to*
22 *Section 1369.*

23 *(d) With the exception of proceedings alleging a violation of*
24 *mandatory supervision, the criminal action remains subject to*
25 *dismissal pursuant to Section 1385. If the criminal action is*
26 *dismissed, the court shall transmit a copy of the order of dismissal*
27 *to the community program director or a designee. In a proceeding*
28 *alleging a violation of mandatory supervision, if the person is not*
29 *placed under a conservatorship as described in paragraph (2) of*
30 *subdivision (c), or if a conservatorship is terminated, the court*
31 *shall reinstate mandatory supervision and may modify the terms*
32 *and conditions of supervision to include appropriate mental health*
33 *treatment or refer the matter to a local mental health court, reentry*
34 *court, or other collaborative justice court available for improving*
35 *the mental health of the defendant.*

36 *(e) If the criminal action against the defendant is dismissed, the*
37 *defendant shall be released from commitment ordered under this*
38 *section, but without prejudice to the initiation of any proceedings*
39 *that may be appropriate under the Lanterman-Petris-Short Act*

1 (Part 1 (commencing with Section 5000) of Division 5 of the
2 Welfare and Institutions Code).

3 (f) As used in this chapter, "community program director" means
4 the person, agency, or entity designated by the State Department
5 of State Hospitals pursuant to Section 1605 of this code and Section
6 4360 of the Welfare and Institutions Code.

7 (g) For the purpose of this section, "secure treatment facility"
8 shall not include, except for state mental hospitals, state
9 developmental centers, and correctional treatment facilities, any
10 facility licensed pursuant to Chapter 2 (commencing with Section
11 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
12 3.2 (commencing with Section 1569) of, Division 2 of the Health
13 and Safety Code, or any community board and care facility.

14 (h) ~~Nothing in this section shall~~ *This section does not* preclude
15 a defendant from filing a petition for habeas corpus to challenge
16 the continuing validity of an order authorizing a treatment facility
17 or outpatient program to involuntarily administer antipsychotic
18 medication to a person being treated as incompetent to stand trial.

19 SEC. 3. Section 5008 of the Welfare and Institutions Code is
20 amended to read:

21 5008. Unless the context otherwise requires, the following
22 definitions shall govern the construction of this part:

23 (a) "Evaluation" consists of multidisciplinary professional
24 analyses of a person's medical, psychological, educational, social,
25 financial, and legal conditions as may appear to constitute a
26 problem. Persons providing evaluation services shall be properly
27 qualified professionals and may be full-time employees of an
28 agency providing face-to-face, which includes telehealth,
29 evaluation services or may be part-time employees or may be
30 employed on a contractual basis.

31 (b) "Court-ordered evaluation" means an evaluation ordered by
32 a superior court pursuant to Article 2 (commencing with Section
33 5200) or by a superior court pursuant to Article 3 (commencing
34 with Section 5225) of Chapter 2.

35 (c) "Intensive treatment" consists of such hospital and other
36 services as may be indicated. Intensive treatment shall be provided
37 by properly qualified professionals and carried out in facilities
38 qualifying for reimbursement under the California Medical
39 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing
40 with Section 14000) of Part 3 of Division 9, or under Title XVIII

1 of the federal Social Security Act and regulations thereunder.
2 Intensive treatment may be provided in hospitals of the United
3 States government by properly qualified professionals. ~~Nothing~~
4 ~~in this~~ *This* part shall be construed to *does not* prohibit an intensive
5 treatment facility from also providing 72-hour evaluation and
6 treatment.

7 (d) "Referral" is referral of persons by each agency or facility
8 providing assessment, evaluation, crisis intervention, or treatment
9 services to other agencies or individuals. The purpose of referral
10 shall be to provide for continuity of care, and may include, but
11 need not be limited to, informing the person of available services,
12 making appointments on the person's behalf, discussing the
13 person's problem with the agency or individual to which the person
14 has been referred, appraising the outcome of referrals, and
15 arranging for personal escort and transportation when necessary.
16 Referral shall be considered complete when the agency or
17 individual to whom the person has been referred accepts
18 responsibility for providing the necessary services. All persons
19 shall be advised of available precare services that prevent initial
20 recourse to hospital treatment or aftercare services that support
21 adjustment to community living following hospital treatment.
22 These services may be provided through county or city mental
23 health departments, state hospitals under the jurisdiction of the
24 State Department of State Hospitals, regional centers under contract
25 with the State Department of Developmental Services, or other
26 public or private entities.

27 Each agency or facility providing evaluation services shall
28 maintain a current and comprehensive file of all community
29 services, both public and private. These files shall contain current
30 agreements with agencies or individuals accepting referrals, as
31 well as appraisals of the results of past referrals.

32 (e) "Crisis intervention" consists of an interview or series of
33 interviews within a brief period of time, conducted by qualified
34 professionals, and designed to alleviate personal or family
35 situations which present a serious and imminent threat to the health
36 or stability of the person or the family. The interview or interviews
37 may be conducted in the home of the person or family, or on an
38 inpatient or outpatient basis with such therapy, or other services,
39 as may be appropriate. The interview or interviews may include
40 family members, significant support persons, providers, or other

1 entities or individuals, as appropriate and as authorized by law.
2 Crisis intervention may, as appropriate, include suicide prevention,
3 psychiatric, welfare, psychological, legal, or other social services.

4 (f) "Prepetition screening" is a screening of all petitions for
5 court-ordered evaluation as provided in Article 2 (commencing
6 with Section 5200) of Chapter 2, consisting of a professional
7 review of all petitions; an interview with the petitioner and,
8 whenever possible, the person alleged, as a result of a mental health
9 disorder, to be a danger to others, or to himself or herself, or to be
10 gravely disabled, to assess the problem and explain the petition;
11 when indicated, efforts to persuade the person to receive, on a
12 voluntary basis, comprehensive evaluation, crisis intervention,
13 referral, and other services specified in this part.

14 (g) "Conservatorship investigation" means investigation by an
15 agency appointed or designated by the governing body of cases in
16 which conservatorship is recommended pursuant to Chapter 3
17 (commencing with Section 5350).

18 (h) (1) For purposes of Article 1 (commencing with Section
19 5150), Article 2 (commencing with Section 5200), and Article 4
20 (commencing with Section 5250) of Chapter 2, and for the purposes
21 of Chapter 3 (commencing with Section 5350), "gravely disabled"
22 means either of the following:

23 (A) A condition in which a person, as a result of a mental health
24 disorder, is unable to provide for his or her basic personal needs
25 for food, clothing, or shelter.

26 (B) A condition in which a person, has been found mentally
27 incompetent under Section 1370 of the Penal Code and all of the
28 following facts exist:

29 (i) ~~The indictment or~~ *complaint, indictment, or* information
30 pending against the person at the time of commitment charges a
31 felony involving death, great bodily harm, or a serious threat to
32 the physical well-being of another person.

33 (ii) ~~The indictment or~~ *There has been a finding of probable*
34 *cause on a complaint pursuant to paragraph (2) of subdivision (a)*
35 *of Section 1368.1 of the Penal Code, a preliminary examination*
36 *pursuant to Section 859b of the Penal Code, or a grand jury*
37 *indictment, and the complaint, indictment, or* information has not
38 been dismissed.

39 (iii) As a result of a mental health disorder, the person is unable
40 to understand the nature and purpose of the proceedings taken

1 against him or her and to assist counsel in the conduct of his or
2 her defense in a rational manner.

3 *(iv) The person represents a substantial danger of physical harm*
4 *to himself or others by reason of a mental disease, defect, or*
5 *disorder.*

6 (2) For purposes of Article 3 (commencing with Section 5225)
7 and Article 4 (commencing with Section 5250), of Chapter 2, and
8 for the purposes of Chapter 3 (commencing with Section 5350),
9 “gravely disabled” means a condition in which a person, as a result
10 of impairment by chronic alcoholism, is unable to provide for his
11 or her basic personal needs for food, clothing, or shelter.

12 (3) The term “gravely disabled” does not include persons with
13 intellectual disabilities by reason of that disability alone.

14 (i) “Peace officer” means a duly sworn peace officer as that
15 term is defined in Chapter 4.5 (commencing with Section 830) of
16 Title 3 of Part 2 of the Penal Code who has completed the basic
17 training course established by the Commission on Peace Officer
18 Standards and Training, or any parole officer or probation officer
19 specified in Section 830.5 of the Penal Code when acting in relation
20 to cases for which he or she has a legally mandated responsibility.

21 (j) “Postcertification treatment” means an additional period of
22 treatment pursuant to Article 6 (commencing with Section 5300)
23 of Chapter 2.

24 (k) “Court,” unless otherwise specified, means a court of record.

25 (l) “Antipsychotic medication” means any medication
26 customarily prescribed for the treatment of symptoms of psychoses
27 and other severe mental and emotional disorders.

28 (m) “Emergency” means a situation in which action to impose
29 treatment over the person’s objection is immediately necessary
30 for the preservation of life or the prevention of serious bodily harm
31 to the patient or others, and it is impracticable to first gain consent.
32 It is not necessary for harm to take place or become unavoidable
33 prior to treatment.

34 (n) “Designated facility” or “facility designated by the county
35 for evaluation and treatment” means a facility that is licensed or
36 certified as a mental health treatment facility or a hospital, as
37 defined in subdivision (a) or (b) of Section 1250 of the Health and
38 Safety Code, by the State Department of Public Health, and may
39 include, but is not limited to, a licensed psychiatric hospital, a

1 licensed psychiatric health facility, and a certified crisis
2 stabilization unit.

3 SEC. 4. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O