

Senate Bill No. 568

CHAPTER 556

An act to amend Section 1369 of, and to add and repeal Section 1369.1 of, the Penal Code, relating to criminal procedure.

[Approved by Governor October 12, 2007. Filed with
Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 568, Wiggins. Criminal procedure: mental competence.

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. If a defendant is found to be mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, during which time the court shall order that the mentally incompetent defendant be delivered to a state hospital or to any other available public or private treatment facility, or be placed on outpatient status, as specified. After the court-appointed psychiatrist examines the defendant and forms an opinion about whether or not treatment of the defendant with antipsychotic medication is appropriate, he or she is required to inform the court of his or her opinions as to the likely side effects of that medication, the efficacy of the medication, and possible alternative treatments.

This bill would include within that requirement that the psychiatrist also inform the court whether it is medically appropriate to administer antipsychotic medication in the county jail. The bill would provide that the term "treatment facility" as used in these provisions, for the sole purpose of administering antipsychotic medication pursuant to a court order, includes a county jail that, upon the concurrence of the county board of supervisors and the county sheriff, the county mental health director, or the chief of corrections, as specified, may be designated to provide medically approved medication to defendants found to be mentally incompetent due to a mental disorder. The bill would limit treatment in these facilities to a maximum of 6 months. The bill would require the State Department of Mental Health to report to the Legislature, not later than January 1, 2009, on specified topics relating to treatment, pursuant to the provisions of the bill, of defendants who are incompetent to stand trial. The bill would provide that its provisions would be repealed on January 1, 2010.

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

SECTION 1. It is the intent of the Legislature to assure timely and humane access to court-approved psychiatric medications while individuals

are in jail and awaiting transfer to a state psychiatric hospital for restoration of competency.

SEC. 2. Section 1369 of the Penal Code is amended to read:

1369. A trial by court or jury of the question of mental competence shall proceed in the following order:

(a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence. If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant. The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail. If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital.

The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment.

(b) (1) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence.

(2) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so.

(c) The prosecution shall present its case regarding the issue of the defendant's present mental competence.

(d) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention.

(e) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury.

(f) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous.

SEC. 3. Section 1369.1 is added to the Penal Code, to read:

1369.1. (a) As used in this chapter, for the sole purpose of administering antipsychotic medication pursuant to a court order, "treatment facility" includes a county jail. Upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. In the case of Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board of supervisors, the county mental health director, and the county sheriff or the chief of corrections. The provisions of Section 1370 and 1370.01 shall apply to antipsychotic medications provided in a county jail, provided however, that the maximum period of time a defendant may be treated in a treatment facility pursuant to this section shall not exceed six months.

(b) The State Department of Mental Health shall report to the Legislature on or before January 1, 2009, on all of the following:

(1) The number of defendants in the state who are incompetent to stand trial.

(2) The resources available at state hospitals and local mental health facilities, other than jails, for returning these defendants to competence.

(3) Additional resources that are necessary to reasonably treat, in a reasonable period of time, at the state and local levels, excluding jails, defendants who are incompetent to stand trial.

(4) What, if any, statewide standards and organizations exist concerning local treatment facilities that could treat defendants who are incompetent to stand trial.

(5) Address the concerns regarding defendants who are incompetent to stand trial who are currently being held in jail awaiting treatment.

(c) Nothing in this section shall be construed to abrogate or in any way limit any provision of law enacted to ensure the due process rights set forth in *Sell v. United States* (2003) 539 U.S. 166.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

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