

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 366

Introduced by Assembly ~~Member Allen~~ Members *Allen and Achadjian*

(Principal coauthor: Senator Blakeslee)

February 14, 2011

An act to amend Section 1370 of the Penal Code, relating to defendants.

LEGISLATIVE COUNSEL'S DIGEST

AB 366, as amended, *Allen*. Defendants: involuntary antipsychotic medication.

Existing law provides that if a defendant becomes mentally incompetent, a trial or judgment related to that defendant shall be suspended until he or she becomes mentally competent. Existing law establishes procedures whereby the court determines the appropriate facility where an incompetent defendant shall be delivered for treatment, and determines whether the defendant consents to the administration of antipsychotic medication, or determines whether involuntary administration of antipsychotic medication is appropriate, as specified. ~~Existing law provides that the involuntary administration of psychotropic medication for inmates under the jurisdiction of the Department of Corrections and Rehabilitation is governed by procedures set forth in a permanent injunction, as specified, which includes a certification process allowing the involuntary administration of those medications~~

for a 21-day period, which may be extended after a hearing conducted by an administrative law judge, as specified.

This bill would require the court to determine if the defendant lacks capacity to make decisions regarding antipsychotic medication before seeking consent from the defendant for those medications. The bill would provide that when, under specified conditions and in the opinion of the treating psychiatrist, involuntary administration of antipsychotic medication becomes necessary, that medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of certifying that involuntary antipsychotic medication has become medically necessary, a 2-person panel, comprised of a psychiatrist who is not involved in the defendant's treatment and a patient representative, reviews the treating psychiatrist's determination to administer the medication and concurs in that determination. The bill provides that if the panel concurs in the treating psychiatrist's certification, antipsychotic medication would be authorized to continue to be administered for the 21-day certification period. The bill would require the treating psychiatrist to file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period, as specified, and would waive fees for the filing of the petition or other document or paper related to the petition. The bill would require the court to determine, prior to the expiration of the 21-day certification period, whether the medication should be administered beyond the 21-day certification period, as specified.

~~This bill would, for defendants who are mentally incompetent, establish a certification procedure similar to that used for inmates, as described above, and would require a court hearing for the involuntary administration of antipsychotic medication, as specified. The bill would authorize a 21-day certification period after an initial 72-hour emergency period during which time antipsychotic medication may be administered to those defendants described above. The bill would require the court to hold a hearing to determine if the involuntary administration of antipsychotic medication should continue beyond the 21-day certification period. The bill would provide that if the court finds that the defendant is gravely disabled, as defined, the court may order the administration of that medication for one year. The bill would further provide that if the court finds that the defendant is a danger to himself or herself, or to others, as specified, the court may order administration of that medication for 180 days~~

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

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

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.

6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.

9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state hospital
11 for the care and treatment of the mentally disordered, or to any
12 other available public or private treatment facility approved by the
13 community program director that will promote the defendant's
14 speedy restoration to mental competence, or placed on outpatient
15 status as specified in Section 1600.

16 (ii) However, if the action against the defendant who has been
17 found mentally incompetent is on a complaint charging a felony
18 offense specified in Section 290, the prosecutor shall determine
19 whether the defendant previously has been found mentally
20 incompetent to stand trial pursuant to this chapter on a charge of
21 a Section 290 offense, or whether the defendant is currently the
22 subject of a pending Section 1368 proceeding arising out of a
23 charge of a Section 290 offense. If either determination is made,
24 the prosecutor shall so notify the court and defendant in writing.
25 After this notification, and opportunity for hearing, the court shall
26 order that the defendant be delivered by the sheriff to a state
27 hospital or other secure treatment facility for the care and treatment
28 of the mentally disordered unless the court makes specific findings
29 on the record that an alternative placement would provide more
30 appropriate treatment for the defendant and would not pose a
31 danger to the health and safety of others.

32 (iii) If the action against the defendant who has been found
33 mentally incompetent is on a complaint charging a felony offense
34 specified in Section 290 and the defendant has been denied bail
35 pursuant to subdivision (b) of Section 12 of Article I of the

1 California Constitution because the court has found, based upon
2 clear and convincing evidence, a substantial likelihood that the
3 person's release would result in great bodily harm to others, the
4 court shall order that the defendant be delivered by the sheriff to
5 a state hospital for the care and treatment of the mentally disordered
6 unless the court makes specific findings on the record that an
7 alternative placement would provide more appropriate treatment
8 for the defendant and would not pose a danger to the health and
9 safety of others.

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

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

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

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

25 (F) A defendant charged with a violent felony may be placed
26 on outpatient status, as specified in Section 1600, only if the court
27 finds that the placement will not pose a danger to the health or
28 safety of others. If the court places a defendant charged with a
29 violent felony on outpatient status, as specified in Section 1600,
30 the court must serve copies of the placement order on defense
31 counsel, the sheriff in the county where the defendant will be
32 placed and the district attorney for the county in which the violent
33 felony charges are pending against the defendant.

34 (2) Prior to making the order directing that the defendant be
35 confined in a state hospital or other treatment facility or placed on
36 outpatient status, the court shall proceed as follows:

37 (A) The court shall order the community program director or a
38 designee to evaluate the defendant and to submit to the court within
39 15 judicial days of the order a written recommendation as to
40 whether the defendant should be required to undergo outpatient

1 treatment, or committed to a state hospital or to any other treatment
2 facility. No person shall be admitted to a state hospital or other
3 treatment facility or placed on outpatient status under this section
4 without having been evaluated by the community program director
5 or a designee.

6 (B) The court shall hear and determine whether the ~~defendant,~~
7 ~~with advice of his or her counsel, consents to the administration~~
8 ~~of~~ *defendant lacks capacity to make decisions regarding*
9 antipsychotic medication, and shall proceed as follows:

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

23 (ii) If the *court has determined that the defendant has the*
24 *capacity to make decisions regarding antipsychotic medication,*
25 *and the* defendant does not consent to the administration of
26 medication, *or the court has determined that the defendant lacks*
27 *capacity to make decisions regarding antipsychotic medication,*
28 the court shall hear and determine whether any of the following
29 is true:

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

1 defendant has a diagnosis of a mental disorder does not alone
2 establish probability of serious harm to the physical or mental
3 health of the defendant.

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

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

28 (iii) If the court finds any of the conditions described in clause
29 (ii) to be true, the court shall issue an order authorizing the
30 treatment facility to involuntarily administer antipsychotic
31 medication to the defendant when and as prescribed by the
32 defendant's treating psychiatrist. The court shall not order
33 involuntary administration of psychotropic medication under
34 subclause (III) of clause (ii) unless the court has first found that
35 the defendant does not meet the criteria for involuntary
36 administration of psychotropic medication under subclause (I) of
37 clause (ii) and does not meet the criteria under subclause (II) of
38 clause (ii).

39 (iv) 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 (v) Any report made pursuant to paragraph (1) of subdivision
5 (b) shall include a description of any antipsychotic medication
6 administered to the defendant and its effects and side effects,
7 including effects on the defendant's appearance or behavior that
8 would affect the defendant's ability to understand the nature of
9 the criminal proceedings or to assist counsel in the conduct of a
10 defense in a reasonable manner. During the time the defendant is
11 confined in a state hospital or other treatment facility or placed on
12 outpatient status, either the defendant or the people may request
13 that the court review any order made pursuant to this subdivision.
14 The defendant, to the same extent enjoyed by other patients in the
15 state hospital or other treatment facility, shall have the right to
16 contact the Patients' Rights Advocate regarding his or her rights
17 under this section.

18 (C) If the defendant consented to antipsychotic medication as
19 described in ~~clause (i) of subparagraph (B)~~, but subsequently
20 withdraws his or her consent, or, if involuntary antipsychotic
21 medication was not ordered pursuant to ~~clause (ii) of subparagraph~~
22 (B), and the treating psychiatrist determines that antipsychotic
23 medication has become medically necessary and appropriate, the
24 treating psychiatrist shall make efforts to obtain informed consent
25 from the defendant for antipsychotic medication. If informed
26 consent is not obtained from the defendant, and the treating
27 psychiatrist is of the opinion that the defendant lacks capacity to
28 make decisions regarding antipsychotic medication ~~as specified~~
29 ~~in subclause (I) of clause (ii) of subparagraph (B), or that the~~
30 ~~defendant is a danger to others as specified in subclause (II) of~~
31 ~~clause (ii) of subparagraph (B), the committing court shall be~~
32 ~~notified of this, including or that the conditions described in~~
33 ~~subclause (I) or (II) of clause (ii) of subparagraph (B) are true,~~
34 ~~the treating psychiatrist shall certify whether the lack of capacity~~
35 ~~and any applicable conditions described above exist. That~~
36 ~~certification shall contain an assessment of the current mental~~
37 status of the defendant and the opinion of the treating psychiatrist
38 that involuntary antipsychotic medication has become medically
39 necessary and appropriate. ~~The court shall provide notice to the~~
40 ~~prosecuting attorney and to the attorney representing the defendant~~

1 and shall set a hearing to determine whether involuntary
2 antipsychotic medication should be ordered in the manner described
3 in subparagraph (B):

4 (D) (i) If the treating psychiatrist determines that antipsychotic
5 medication has become medically necessary and appropriate
6 pursuant to subparagraph (C), and the person has been medicated
7 for 72 hours or less, the person may be certified for not more than
8 21 days of additional involuntary medication, pursuant to the
9 procedures set forth in the order granting plaintiff's motion for
10 clarification and modification of injunction and permanent
11 injunction, in the case of *Keyhea v. Rushen* Case No. 67432, filed
12 October 31, 1986, in the Superior Court of the State of California,
13 in and for the County of Solano. The treating psychiatrist shall,
14 concurrently with certifying the person, file a copy of the
15 certification and a petition with the committing court for issuance
16 of an emergency order to administer antipsychotic medication
17 beyond the certification period. For purposes of this subparagraph,
18 the treating psychiatrist shall not be required to pay or deposit any
19 fee for the filing of the petition or other document or paper related
20 to the petition:

21 (ii) The court shall provide notice to the prosecuting attorney
22 and to the attorney representing the defendant, and shall hold a
23 hearing, no later than 18 days from the date of the certification, to
24 establish probable cause for grounds to administer antipsychotic
25 medication beyond the certification period:

26 (iii) The court shall render its decision on the petition no later
27 than three days after the hearing, and in any event no later than
28 the expiration of the 21-day certification period:

29 (iv) If, as a result of the hearing, the court determines that
30 probable cause continues to exist for the administration of
31 antipsychotic medication, based on clear and convincing evidence,
32 the court may issue an order authorizing the administration of that
33 medication as follows:

34 (F) The court finds that the person is gravely disabled, meaning
35 that as a result of a mental disorder, the person is unable to use the
36 elements of life essential to health and safety including food,
37 clothing, and shelter, even though provided to the inmate by others.
38 The court may order the administration of antipsychotic medication
39 for a period of one year:

1 ~~(H) The court finds that the person is a threat to himself or~~
2 ~~herself, meaning that as a result of a mental disorder, while in an~~
3 ~~inpatient setting, the person has threatened to or attempted to take~~
4 ~~his or her own life or has threatened to, attempted to, or inflicted~~
5 ~~serious physical injury on himself or herself and continues to~~
6 ~~represent an imminent threat of inflicting serious physical injury~~
7 ~~on himself or herself. The court may order the administration of~~
8 ~~antipsychotic medication for a period of 180 days.~~

9 ~~(III) The court finds that the person is a danger to others,~~
10 ~~meaning that as a result of a mental disorder, while in an inpatient~~
11 ~~setting, the person has threatened to, attempted to, or inflicted~~
12 ~~serious physical injury on another and continues to represent an~~
13 ~~imminent threat of inflicting serious physical injury on another.~~
14 ~~The court may order the administration of antipsychotic medication~~
15 ~~for a period of 180 days.~~

16 ~~(D) (i) If the treating psychiatrist certifies that antipsychotic~~
17 ~~medication has become medically necessary and appropriate~~
18 ~~pursuant to subparagraph (C), antipsychotic medication may be~~
19 ~~administered to the defendant for not more than 21 days, provided,~~
20 ~~however, that, within 72 hours of the certification, a two-person~~
21 ~~panel comprised of a psychiatrist who is not involved in the~~
22 ~~defendant's treatment and a patient representative shall review~~
23 ~~the treating psychiatrist's certification to administer antipsychotic~~
24 ~~medication. If both panelists concur in the treating psychiatrist's~~
25 ~~certification, then antipsychotic medication may continue to be~~
26 ~~administered to the defendant for the 21-day certification period.~~
27 ~~Concurrently with the treating psychiatrist's certification, the~~
28 ~~treating psychiatrist shall file a copy of the certification and a~~
29 ~~petition with the court for issuance of an order to administer~~
30 ~~antipsychotic medication beyond the 21-day certification period.~~
31 ~~For purposes of this subparagraph, the treating psychiatrist shall~~
32 ~~not be required to pay or deposit any fee for the filing of the~~
33 ~~petition or other document or paper related to the petition.~~

34 ~~(ii) The court shall provide notice to the prosecuting attorney~~
35 ~~and to the attorney representing the defendant, and shall hold a~~
36 ~~hearing, no later than 18 days from the date of the certification,~~
37 ~~to determine whether antipsychotic medication should be ordered~~
38 ~~beyond the certification period.~~

39 ~~(iii) If, as a result of the hearing, the court determines that~~
40 ~~antipsychotic medication should be administered beyond the~~

1 *certification period, the court shall issue an order authorizing the*
2 *administration of that medication.*

3 *(iv) The court shall render its decision on the petition and issue*
4 *its order no later than three calendar days after the hearing and,*
5 *in any event, no later than the expiration of the 21-day certification*
6 *period.*

7 (3) When the court orders that the defendant be confined in a
8 state hospital or other public or private treatment facility, the court
9 shall provide copies of the following documents which shall be
10 taken with the defendant to the state hospital or other treatment
11 facility where the defendant is to be confined:

12 (A) The commitment order, including a specification of the
13 charges.

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

16 (C) A computation or statement setting forth the amount of
17 credit for time served, if any, to be deducted from the maximum
18 term of commitment.

19 (D) State summary criminal history information.

20 (E) Any arrest reports prepared by the police department or
21 other law enforcement agency.

22 (F) Any court-ordered psychiatric examination or evaluation
23 reports.

24 (G) The community program director's placement
25 recommendation report.

26 (H) Records of any finding of mental incompetence pursuant
27 to this chapter arising out of a complaint charging a felony offense
28 specified in Section 290 or any pending Section 1368 proceeding
29 arising out of a charge of a Section 290 offense.

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

1 (5) When directing that the defendant be confined in a state
2 hospital pursuant to this subdivision, the court shall select the
3 hospital in accordance with the policies established by the State
4 Department of Mental Health.

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

29 Prior to making an order for transfer under this section, the court
30 shall notify the defendant, the attorney of record for the defendant,
31 the prosecuting attorney, and the community program director or
32 a designee.

33 (B) If the defendant is initially committed to a state hospital or
34 secure treatment facility pursuant to clause (ii) or (iii) of
35 subparagraph (B) of paragraph (1) and is subsequently transferred
36 to any other facility, copies of the documents specified in paragraph
37 (3) shall be taken with the defendant to each subsequent facility
38 to which the defendant is transferred. The transferring facility shall
39 also notify the appropriate law enforcement agency or agencies
40 having local jurisdiction at the site of the new facility that the

1 defendant is a person subject to clause (ii) or (iii) of subparagraph
2 (B) of paragraph (1).

3 (b) (1) Within 90 days of a commitment made pursuant to
4 subdivision (a), the medical director of the state hospital or other
5 treatment facility to which the defendant is confined shall make a
6 written report to the court and the community program director
7 for the county or region of commitment, or a designee, concerning
8 the defendant's progress toward recovery of mental competence.
9 Where the defendant is on outpatient status, the outpatient treatment
10 staff shall make a written report to the community program director
11 concerning the defendant's progress toward recovery of mental
12 competence. Within 90 days of placement on outpatient status, the
13 community program director shall report to the court on this matter.
14 If the defendant has not recovered mental competence, but the
15 report discloses a substantial likelihood that the defendant will
16 regain mental competence in the foreseeable future, the defendant
17 shall remain in the state hospital or other treatment facility or on
18 outpatient status. Thereafter, at six-month intervals or until the
19 defendant becomes mentally competent, where the defendant is
20 confined in a treatment facility, the medical director of the hospital
21 or person in charge of the facility shall report in writing to the
22 court and the community program director or a designee regarding
23 the defendant's progress toward recovery of mental competence.
24 Where the defendant is on outpatient status, after the initial 90-day
25 report, the outpatient treatment staff shall report to the community
26 program director on the defendant's progress toward recovery,
27 and the community program director shall report to the court on
28 this matter at six-month intervals. A copy of these reports shall be
29 provided to the prosecutor and defense counsel by the court. If the
30 report indicates that there is no substantial likelihood that the
31 defendant will regain mental competence in the foreseeable future,
32 the committing court shall order the defendant to be returned to
33 the court for proceedings pursuant to paragraph (2) of subdivision
34 (c). The court shall transmit a copy of its order to the community
35 program director or a designee.

36 (2) Any defendant who has been committed or has been on
37 outpatient status for 18 months and is still hospitalized or on
38 outpatient status shall be returned to the committing court where
39 a hearing shall be held pursuant to the procedures set forth in

1 Section 1369. The court shall transmit a copy of its order to the
2 community program director or a designee.

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

8 (4) At each review by the court specified in this subdivision,
9 the court shall determine if the security level of housing and
10 treatment is appropriate and may make an order in accordance
11 with its determination.

12 (c) (1) At the end of three years from the date of commitment
13 or a period of commitment equal to the maximum term of
14 imprisonment provided by law for the most serious offense charged
15 in the information, indictment, or misdemeanor complaint,
16 whichever is shorter, a defendant who has not recovered mental
17 competence shall be returned to the committing court. The court
18 shall notify the community program director or a designee of the
19 return and of any resulting court orders.

20 (2) Whenever any defendant is returned to the court pursuant
21 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this
22 subdivision and it appears to the court that the defendant is gravely
23 disabled, as defined in subparagraph (B) of paragraph (1) of
24 subdivision (h) of Section 5008 of the Welfare and Institutions
25 Code, the court shall order the conservatorship investigator of the
26 county of commitment of the defendant to initiate conservatorship
27 proceedings for the defendant pursuant to Chapter 3 (commencing
28 with Section 5350) of Part 1 of Division 5 of the Welfare and
29 Institutions Code. Any hearings required in the conservatorship
30 proceedings shall be held in the superior court in the county that
31 ordered the commitment. The court shall transmit a copy of the
32 order directing initiation of conservatorship proceedings to the
33 community program director or a designee, the sheriff and the
34 district attorney of the county in which criminal charges are
35 pending, and the defendant's counsel of record. The court shall
36 notify the community program director or a designee, the sheriff
37 and district attorney of the county in which criminal charges are
38 pending, and the defendant's counsel of record of the outcome of
39 the conservatorship proceedings.

1 (3) If a change in placement is proposed for a defendant who
2 is committed pursuant to subparagraph (B) of paragraph (1) of
3 subdivision (h) of Section 5008 of the Welfare and Institutions
4 Code, the court shall provide notice and an opportunity to be heard
5 with respect to the proposed placement of the defendant to the
6 sheriff and the district attorney of the county in which criminal
7 charges are pending.

8 (4) Where the defendant is confined in a treatment facility, a
9 copy of any report to the committing court regarding the
10 defendant's progress toward recovery of mental competence shall
11 be provided by the committing court to the prosecutor and to the
12 defense counsel.

13 (d) The criminal action remains subject to dismissal pursuant
14 to Section 1385. If the criminal action is dismissed, the court shall
15 transmit a copy of the order of dismissal to the community program
16 director or a designee.

17 (e) If the criminal charge against the defendant is dismissed,
18 the defendant shall be released from any commitment ordered
19 under this section, but without prejudice to the initiation of any
20 proceedings that may be appropriate under the
21 Lanterman-Petris-Short Act, Part 1 (commencing with Section
22 5000) of Division 5 of the Welfare and Institutions Code.

23 (f) As used in this chapter, "community program director" means
24 the person, agency, or entity designated by the State Department
25 of Mental Health pursuant to Section 1605 of this code and Section
26 4360 of the Welfare and Institutions Code.

27 (g) For the purpose of this section, "secure treatment facility"
28 shall not include, except for state mental hospitals, state
29 developmental centers, and correctional treatment facilities, any
30 facility licensed pursuant to Chapter 2 (commencing with Section
31 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
32 3.2 (commencing with Section 1569) of, Division 2 of the Health
33 and Safety Code, or any community board and care facility.

O