

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Lowenthal
(Coauthor: Senator Anderson)

February 20, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, Lowenthal. Defendants: competency.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

This bill would require the court to consider opinions developed by examining medical professionals during the inquiry determining mental competence when the court is determining if the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication.

Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize a court to extend the administrative law judge's order authorizing involuntary medication for 14 days beyond the 21-day certification period upon a finding of good cause or by stipulation of the parties. The bill would authorize the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed, to petition the court for an order to administer involuntary medication.

Existing law provides that an order by the court authorizing involuntary medication of the defendant is valid for one year. Existing law requires the court to review the order 6 months after it is made to determine if the grounds for the authorization remain. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence, within 90 days of commitment, and thereafter, at 6-month intervals or until the defendant becomes mentally competent.

This bill would require the court to review its order authorizing involuntary medication at the time of review of the initial progress report and in conjunction with the 6-month intervals described above. The bill would provide that within 60 days of the expiration of the one year involuntary medication order, the district attorney, county counsel, or representative of the facility where the defendant is being treated may petition the committing court for a one year renewal, and would require the petition to include the basis for involuntary medication. The bill would require notice of the petition to the defendant, the defendant's attorney, and the district attorney, and would require the court to hear and determine whether the defendant continues to meet the criteria for involuntary medication. The bill would require the 90-day and 6-month reports described above regarding progress towards competence to also

address whether the administration of antipsychotic medication remains necessary.

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, including a
13 local county jail treatment facility, approved by the community
14 program director that will promote the defendant's speedy
15 restoration to mental competence, or placed on outpatient status
16 as specified in Section 1600.

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

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

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

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

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

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

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

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

1 (A) The court shall order the community program director or a
2 designee to evaluate the defendant and to submit to the court within
3 15 judicial days of the order a written recommendation as to
4 whether the defendant should be required to undergo outpatient
5 treatment, or *be* committed to a state hospital or to any other
6 treatment facility. A person shall not be admitted to a state hospital
7 or other treatment facility or placed on outpatient status under this
8 section without having been evaluated by the community program
9 director or a designee. The community program director or
10 designee shall evaluate the appropriate placement for the defendant
11 between a state hospital or a local county jail treatment facility
12 based upon guidelines provided by the State Department of State
13 Hospitals. If a local county jail treatment facility is selected, the
14 State Department of State Hospitals shall provide treatment at the
15 county jail treatment facility and reimburse the county jail
16 treatment facility for the reasonable costs of the bed during the
17 treatment. The six-month limitation in Section 1369.1 shall not
18 apply to individuals deemed incompetent to stand trial who are
19 being treated to restore competency within a county jail treatment
20 facility pursuant to this section.

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

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

1 (iii) In all cases, the treating hospital, facility, or program may
2 administer medically appropriate antipsychotic medication
3 prescribed by a psychiatrist in an emergency as described in
4 subdivision (m) of Section 5008 of the Welfare and Institutions
5 Code.

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

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

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

1 contact the patients' rights advocate regarding his or her rights
2 under this section.

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

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

1 defendant shall also have the following rights with respect to the
2 medication review hearing:

3 (I) To being given timely access to the defendant's records.

4 (II) To be present at the hearing, unless the defendant waives
5 that right.

6 (III) To present evidence at the hearing.

7 (IV) To question persons presenting evidence supporting
8 involuntary medication.

9 (V) To make reasonable requests for attendance of witnesses
10 on the defendant's behalf.

11 (VI) To a hearing conducted in an impartial and informal
12 manner.

13 (ii) If the administrative law judge determines that the defendant
14 either meets the criteria specified in subclause (I) of clause (i) of
15 subparagraph (B), or meets the criteria specified in subclause (II)
16 of clause (i) of subparagraph (B), then antipsychotic medication
17 may continue to be administered to the defendant for the 21-day
18 certification period. Concurrently with the treating psychiatrist's
19 certification, the treating psychiatrist shall file a copy of the
20 certification and a petition with the court for issuance of an order
21 to administer antipsychotic medication beyond the 21-day
22 certification period. For purposes of this subparagraph, the treating
23 psychiatrist shall not be required to pay or deposit any fee for the
24 filing of the petition or other document or paper related to the
25 petition.

26 (iii) If the administrative law judge disagrees with the
27 certification, medication may not be administered involuntarily
28 until the court determines that antipsychotic medication should be
29 administered pursuant to this section.

30 (iv) The court shall provide notice to the prosecuting attorney
31 and to the attorney representing the defendant, and shall hold a
32 hearing, no later than 18 days from the date of the certification, to
33 determine whether antipsychotic medication should be ordered
34 beyond the certification period.

35 (v) If, as a result of the hearing, the court determines that
36 antipsychotic medication should be administered beyond the
37 certification period, the court shall issue an order authorizing the
38 administration of that medication.

39 (vi) The court shall render its decision on the petition and issue
40 its order no later than three calendar days after the hearing and, in

1 any event, no later than the expiration of the 21-day certification
2 period.
3 (vii) If the administrative law judge upholds the certification
4 pursuant to clause (ii), the court may, for a period not to exceed
5 14 days, extend the certification and continue the hearing pursuant
6 to stipulation between the parties or upon a finding of good cause.
7 In determining good cause, the court may review the petition filed
8 with the court, the administrative law judge’s order, and any
9 additional testimony needed by the court to determine if it is
10 appropriate to continue medication beyond the 21-day certification
11 and for a period of up to 14 days.
12 (viii) The district attorney, county counsel, or representative of
13 any facility where a defendant found incompetent to stand trial is
14 committed may petition the court for an order to administer
15 involuntary medication pursuant to the criteria set forth in
16 subclauses (II) and (III) of clause (i) of subparagraph (B). The
17 order is reviewable as provided in paragraph (7).
18 (3) When the court orders that the defendant be confined in a
19 state hospital or other public or private treatment facility, the court
20 shall provide copies of the following documents which shall be
21 taken with the defendant to the state hospital or other treatment
22 facility where the defendant is to be confined:
23 (A) The commitment order, including a specification of the
24 charges.
25 (B) A computation or statement setting forth the maximum term
26 of commitment in accordance with subdivision (c).
27 (C) A computation or statement setting forth the amount of
28 credit for time served, if any, to be deducted from the maximum
29 term of commitment.
30 (D) State summary criminal history information.
31 (E) Any arrest reports prepared by the police department or
32 other law enforcement agency.
33 (F) Any court-ordered psychiatric examination or evaluation
34 reports.
35 (G) The community program director’s placement
36 recommendation report.
37 (H) Records of any finding of mental incompetence pursuant
38 to this chapter arising out of a complaint charging a felony offense
39 specified in Section 290 or any pending Section 1368 proceeding
40 arising out of a charge of a Section 290 offense.

1 (4) When the defendant is committed to a treatment facility
2 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
3 court makes the findings specified in clause (ii) or (iii) of
4 subparagraph (B) of paragraph (1) to assign the defendant to a
5 treatment facility other than a state hospital or other secure
6 treatment facility, the court shall order that notice be given to the
7 appropriate law enforcement agency or agencies having local
8 jurisdiction at the site of the placement facility of any finding of
9 mental incompetence pursuant to this chapter arising out of a
10 charge of a Section 290 offense.

11 (5) When directing that the defendant be confined in a state
12 hospital pursuant to this subdivision, the court shall select the
13 hospital in accordance with the policies established by the State
14 Department of State Hospitals.

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

39 Prior to making an order for transfer under this section, the court
40 shall notify the defendant, the attorney of record for the defendant,

1 the prosecuting attorney, and the community program director or
2 a designee.

3 (B) If the defendant is initially committed to a state hospital or
4 secure treatment facility pursuant to clause (ii) or (iii) of
5 subparagraph (B) of paragraph (1) and is subsequently transferred
6 to any other facility, copies of the documents specified in paragraph
7 (3) shall be taken with the defendant to each subsequent facility
8 to which the defendant is transferred. The transferring facility shall
9 also notify the appropriate law enforcement agency or agencies
10 having local jurisdiction at the site of the new facility that the
11 defendant is a person subject to clause (ii) or (iii) of subparagraph
12 (B) of paragraph (1).

13 (7) (A) An order by the court authorizing involuntary
14 medication of the defendant shall be valid for no more than one
15 year. The court shall review the order at the time of the review of
16 the initial report and the six-month progress reports pursuant to
17 paragraph (1) of subdivision (b) to determine if the grounds for
18 the authorization remain. In the review, the court shall consider
19 the reports of the treating psychiatrist or psychiatrists and the
20 defendant's patients' rights advocate or attorney. The court may
21 require testimony from the treating psychiatrist or psychiatrists
22 and the patients' rights advocate or attorney, if necessary. The
23 court may continue the order authorizing involuntary medication
24 for up to another six months, or vacate the order, or make any other
25 appropriate order.

26 (B) Within 60 days before the expiration of the one-year
27 involuntary medication order, the district attorney, county counsel,
28 or representative of any facility where a defendant found
29 incompetent to stand trial is committed may petition the committing
30 court for a renewal, subject to the same conditions and
31 requirements as in subparagraph (A). The petition shall include
32 the basis for involuntary medication set forth in clause (i) of
33 subparagraph (B) of paragraph (2). Notice of the petition shall be
34 provided to the defendant, the defendant's attorney, and the district
35 attorney. The court shall hear and determine whether the defendant
36 continues to meet the criteria set forth in clause (i) of subparagraph
37 (B) of paragraph (2). The hearing on any petition to renew an order
38 for involuntary medication shall be conducted prior to the
39 expiration of the current order.

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

37 (2) Where the court has issued an order authorizing the treating
38 facility to involuntarily administer antipsychotic medication to the
39 defendant, the reports made pursuant to paragraph (1) concerning
40 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 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,
26 whichever is shorter, a defendant who has not recovered mental
27 competence shall be returned to the committing court. The court
28 shall notify the community program director or a designee of the
29 return and of any resulting court orders.

30 (2) Whenever any defendant is returned to the court pursuant
31 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
32 subdivision and it appears to the court that the defendant is gravely
33 disabled, as defined in subparagraph (B) of paragraph (1) of
34 subdivision (h) of Section 5008 of the Welfare and Institutions
35 Code, the court shall order the conservatorship investigator of the
36 county of commitment of the defendant to initiate conservatorship
37 proceedings for the defendant pursuant to Chapter 3 (commencing
38 with Section 5350) of Part 1 of Division 5 of the Welfare and
39 Institutions Code. Any hearings required in the conservatorship
40 proceedings shall be held in the superior court in the county that

1 ordered the commitment. The court shall transmit a copy of the
2 order directing initiation of conservatorship proceedings to the
3 community program director or a designee, the sheriff and the
4 district attorney of the county in which criminal charges are
5 pending, and the defendant’s counsel of record. The court shall
6 notify the community program director or a designee, the sheriff
7 and district attorney of the county in which criminal charges are
8 pending, and the defendant’s counsel of record of the outcome of
9 the conservatorship proceedings.

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

17 (4) Where the defendant is confined in a treatment facility, a
18 copy of any report to the committing court regarding the
19 defendant’s progress toward recovery of mental competence shall
20 be provided by the committing court to the prosecutor and to the
21 defense counsel.

22 (d) The criminal action remains subject to dismissal pursuant
23 to Section 1385. If the criminal action is dismissed, the court shall
24 transmit a copy of the order of dismissal to the community program
25 director or a designee.

26 (e) If the criminal charge against the defendant is dismissed,
27 the defendant shall be released from any commitment ordered
28 under this section, but without prejudice to the initiation of any
29 proceedings that may be appropriate under the
30 Lanterman-Petris-Short Act, Part 1 (commencing with Section
31 5000) of Division 5 of the Welfare and Institutions Code.

32 (f) As used in this chapter, “community program director” means
33 the person, agency, or entity designated by the State Department
34 of State Hospitals pursuant to Section 1605 of this code and Section
35 4360 of the Welfare and Institutions Code.

36 (g) For the purpose of this section, “secure treatment facility”
37 shall not include, except for state mental hospitals, state
38 developmental centers, and correctional treatment facilities, any
39 facility licensed pursuant to Chapter 2 (commencing with Section
40 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter

1 3.2 (commencing with Section 1569) of, Division 2 of the Health
2 and Safety Code, or any community board and care facility.
3 (h) Nothing in this section shall preclude a defendant from filing
4 a petition for habeas corpus to challenge the continuing validity
5 of an order authorizing a treatment facility or outpatient program
6 to involuntarily administer antipsychotic medication to a person
7 being treated as incompetent to stand trial.

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