

**ASSEMBLY BILL**

**No. 2625**

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**Introduced by Assembly Member Achadjian**

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2625, as introduced, Achadjian. Defendants: competence.

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 voluntary and involuntary administration of antipsychotic medication. 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. Existing law requires, that if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for conservatorship proceedings.

This bill would require, if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court to order the defendant to be returned to the court no later than 10 days following receipt of the report, and would require the medical director of the state hospital or other treatment facility in which the defendant is confined to promptly notify the defense counsel and the district attorney.

By imposing additional responsibilities on medical directors at local facilities, this bill would impose a state-mandated local program.

Existing law provides that at the end of 3 years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.

This bill would require the defendant to be returned to the committing court no later than 90 days prior to the expiration of his or her term of commitment.

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 these statutory provisions.

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 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

1 for the care and treatment of the mentally disordered, or to any  
2 other available public or private treatment facility, including a  
3 local county jail treatment facility, approved by the community  
4 program director that will promote the defendant's speedy  
5 restoration to mental competence, or placed on outpatient status  
6 as specified in Section 1600.

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

23 (iii) If the action against the defendant who has been found  
24 mentally incompetent is on a complaint charging a felony offense  
25 specified in Section 290 and the defendant has been denied bail  
26 pursuant to subdivision (b) of Section 12 of Article I of the  
27 California Constitution because the court has found, based upon  
28 clear and convincing evidence, a substantial likelihood that the  
29 person's release would result in great bodily harm to others, the  
30 court shall order that the defendant be delivered by the sheriff to  
31 a state hospital for the care and treatment of the mentally disordered  
32 unless the court makes specific findings on the record that an  
33 alternative placement would provide more appropriate treatment  
34 for the defendant and would not pose a danger to the health and  
35 safety of others.

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

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

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

10 (E) For purposes of this paragraph, “violent felony” means an  
11 offense specified in subdivision (c) of Section 667.5.

12 (F) A defendant charged with a violent felony may be placed  
13 on outpatient status, as specified in Section 1600, only if the court  
14 finds that the placement will not pose a danger to the health or  
15 safety of others. If the court places a defendant charged with a  
16 violent felony on outpatient status, as specified in Section 1600,  
17 the court must serve copies of the placement order on defense  
18 counsel, the sheriff in the county where the defendant will be  
19 placed and the district attorney for the county in which the violent  
20 felony charges are pending against the defendant.

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

24 (A) The court shall order the community program director or a  
25 designee to evaluate the defendant and to submit to the court within  
26 15 judicial days of the order a written recommendation as to  
27 whether the defendant should be required to undergo outpatient  
28 treatment, or committed to a state hospital or to any other treatment  
29 facility. No person shall be admitted to a state hospital or other  
30 treatment facility or placed on outpatient status under this section  
31 without having been evaluated by the community program director  
32 or a designee. The community program director or designee shall  
33 evaluate the appropriate placement for the defendant between a  
34 state hospital or a local county jail treatment facility based upon  
35 guidelines provided by the State Department of State Hospitals.  
36 If a local county jail treatment facility is selected, the State  
37 Department of State Hospitals shall provide treatment at the county  
38 jail treatment facility and reimburse the county jail treatment  
39 facility for the reasonable costs of the bed during the treatment.  
40 The six-month limitation in Section 1369.1 shall not apply to

1 individuals deemed incompetent to stand trial who are being treated  
2 to restore competency within a county jail treatment facility  
3 pursuant to this section.

4 (B) The court shall hear and determine whether the defendant  
5 lacks capacity to make decisions regarding the administration of  
6 antipsychotic medication, and shall proceed as follows:

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

9 (I) The defendant lacks capacity to make decisions regarding  
10 antipsychotic medication, the defendant's mental disorder requires  
11 medical treatment with antipsychotic medication, and, if the  
12 defendant's mental disorder is not treated with antipsychotic  
13 medication, it is probable that serious harm to the physical or  
14 mental health of the patient will result. Probability of serious harm  
15 to the physical or mental health of the defendant requires evidence  
16 that the defendant is presently suffering adverse effects to his or  
17 her physical or mental health, or the defendant has previously  
18 suffered these effects as a result of a mental disorder and his or  
19 her condition is substantially deteriorating. The fact that a  
20 defendant has a diagnosis of a mental disorder does not alone  
21 establish probability of serious harm to the physical or mental  
22 health of the defendant.

23 (II) The defendant is a danger to others, in that the defendant  
24 has inflicted, attempted to inflict, or made a serious threat of  
25 inflicting substantial physical harm on another while in custody,  
26 or the defendant had inflicted, attempted to inflict, or made a  
27 serious threat of inflicting substantial physical harm on another  
28 that resulted in his or her being taken into custody, and the  
29 defendant presents, as a result of mental disorder or mental defect,  
30 a demonstrated danger of inflicting substantial physical harm on  
31 others. Demonstrated danger may be based on an assessment of  
32 the defendant's present mental condition, including a consideration  
33 of past behavior of the defendant within six years prior to the time  
34 the defendant last attempted to inflict, inflicted, or threatened to  
35 inflict substantial physical harm on another, and other relevant  
36 evidence.

37 (III) The people have charged the defendant with a serious crime  
38 against the person or property, involuntary administration of  
39 antipsychotic medication is substantially likely to render the  
40 defendant competent to stand trial, the medication is unlikely to

1 have side effects that interfere with the defendant's ability to  
2 understand the nature of the criminal proceedings or to assist  
3 counsel in the conduct of a defense in a reasonable manner, less  
4 intrusive treatments are unlikely to have substantially the same  
5 results, and antipsychotic medication is in the patient's best medical  
6 interest in light of his or her medical condition.

7 (ii) If the court finds any of the conditions described in clause  
8 (i) to be true, the court shall issue an order authorizing the treatment  
9 facility to involuntarily administer antipsychotic medication to the  
10 defendant when and as prescribed by the defendant's treating  
11 psychiatrist. The court shall not order involuntary administration  
12 of psychotropic medication under subclause (III) of clause (i)  
13 unless the court has first found that the defendant does not meet  
14 the criteria for involuntary administration of psychotropic  
15 medication under subclause (I) of clause (i) and does not meet the  
16 criteria under subclause (II) of clause (i).

17 (iii) In all cases, the treating hospital, facility, or program may  
18 administer medically appropriate antipsychotic medication  
19 prescribed by a psychiatrist in an emergency as described in  
20 subdivision (m) of Section 5008 of the Welfare and Institutions  
21 Code.

22 (iv) If the court has determined that the defendant has the  
23 capacity to make decisions regarding antipsychotic medication,  
24 and if the defendant, with advice of his or her counsel, consents,  
25 the court order of commitment shall include confirmation that  
26 antipsychotic medication may be given to the defendant as  
27 prescribed by a treating psychiatrist pursuant to the defendant's  
28 consent. The commitment order shall also indicate that, if the  
29 defendant withdraws consent for antipsychotic medication, after  
30 the treating psychiatrist complies with the provisions of  
31 subparagraph (C), the defendant shall be returned to court for a  
32 hearing in accordance with subparagraphs (C) and (D) regarding  
33 whether antipsychotic medication shall be administered  
34 involuntarily.

35 (v) If the court has determined that the defendant has the  
36 capacity to make decisions regarding antipsychotic medication  
37 and if the defendant, with advice from his or her counsel, does not  
38 consent, the court order for commitment shall indicate that, after  
39 the treating psychiatrist complies with the provisions of  
40 subparagraph (C), the defendant shall be returned to court for a

1 hearing in accordance with subparagraphs (C) and (D) regarding  
2 whether antipsychotic medication shall be administered  
3 involuntarily.

4 (vi) 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 (iv) of subparagraph (B), but subsequently  
20 withdraws his or her consent, or, if involuntary antipsychotic  
21 medication was not ordered pursuant to clause (v) 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 based on the  
29 conditions described in subclause (I) or (II) of clause (i) of  
30 subparagraph (B), the treating psychiatrist shall certify whether  
31 the lack of capacity and any applicable conditions described above  
32 exist. That certification shall contain an assessment of the current  
33 mental status of the defendant and the opinion of the treating  
34 psychiatrist that involuntary antipsychotic medication has become  
35 medically necessary and appropriate.

36 (D) (i) If the treating psychiatrist certifies that antipsychotic  
37 medication has become medically necessary and appropriate  
38 pursuant to subparagraph (C), antipsychotic medication may be  
39 administered to the defendant for not more than 21 days, provided,  
40 however, that, within 72 hours of the certification, the defendant

1 is provided a medication review hearing before an administrative  
2 law judge to be conducted at the facility where the defendant is  
3 receiving treatment. The treating psychiatrist shall present the case  
4 for the certification for involuntary treatment and the defendant  
5 shall be represented by an attorney or a patients' rights advocate.  
6 The attorney or patients' rights advocate shall be appointed to meet  
7 with the defendant no later than one day prior to the medication  
8 review hearing to review the defendant's rights at the medication  
9 review hearing, discuss the process, answer questions or concerns  
10 regarding involuntary medication or the hearing, assist the  
11 defendant in preparing for the hearing and advocating for his or  
12 her interests at the hearing, review the panel's final determination  
13 following the hearing, advise the defendant of his or her right to  
14 judicial review of the panel's decision, and provide the defendant  
15 with referral information for legal advice on the subject. The  
16 defendant shall also have the following rights with respect to the  
17 medication review hearing:

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

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

21 (III) To present evidence at the hearing.

22 (IV) To question persons presenting evidence supporting  
23 involuntary medication.

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

26 (VI) To a hearing conducted in an impartial and informal  
27 manner.

28 (ii) If the administrative law judge determines that the defendant  
29 either meets the criteria specified in subclause (I) of clause (i) of  
30 subparagraph (B), or meets the criteria specified in subclause (II)  
31 of clause (i) of subparagraph (B), then antipsychotic medication  
32 may continue to be administered to the defendant for the 21-day  
33 certification period. Concurrently with the treating psychiatrist's  
34 certification, the treating psychiatrist shall file a copy of the  
35 certification and a petition with the court for issuance of an order  
36 to administer antipsychotic medication beyond the 21-day  
37 certification period. For purposes of this subparagraph, the treating  
38 psychiatrist shall not be required to pay or deposit any fee for the  
39 filing of the petition or other document or paper related to the  
40 petition.

1 (iii) If the administrative law judge disagrees with the  
2 certification, medication may not be administered involuntarily  
3 until the court determines that antipsychotic medication should be  
4 administered pursuant to this section.

5 (iv) The court shall provide notice to the prosecuting attorney  
6 and to the attorney representing the defendant, and shall hold a  
7 hearing, no later than 18 days from the date of the certification, to  
8 determine whether antipsychotic medication should be ordered  
9 beyond the certification period.

10 (v) If, as a result of the hearing, the court determines that  
11 antipsychotic medication should be administered beyond the  
12 certification period, the court shall issue an order authorizing the  
13 administration of that medication.

14 (vi) The court shall render its decision on the petition and issue  
15 its order no later than three calendar days after the hearing and, in  
16 any event, no later than the expiration of the 21-day certification  
17 period.

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) An order by the court authorizing involuntary medication  
14 of the defendant shall be valid for no more than one year. The  
15 court shall review the order six months after the order was made  
16 to determine if the grounds for the authorization remain. In the  
17 review, the court shall consider the reports of the treating  
18 psychiatrist or psychiatrists and the defendant's patients' rights  
19 advocate or attorney. The court may require testimony from the  
20 treating psychiatrist or psychiatrists and the patients' rights  
21 advocate or attorney, if necessary. The court may continue the  
22 order authorizing involuntary medication for up to another six  
23 months, or vacate the order, or make any other appropriate order.

24 (b) (1) Within 90 days of a commitment made pursuant to  
25 subdivision (a), the medical director of the state hospital or other  
26 treatment facility to which the defendant is confined shall make a  
27 written report to the court and the community program director  
28 for the county or region of commitment, or a designee, concerning  
29 the defendant's progress toward recovery of mental competence.  
30 Where the defendant is on outpatient status, the outpatient treatment  
31 staff shall make a written report to the community program director  
32 concerning the defendant's progress toward recovery of mental  
33 competence. Within 90 days of placement on outpatient status, the  
34 community program director shall report to the court on this matter.  
35 If the defendant has not recovered mental competence, but the  
36 report discloses a substantial likelihood that the defendant will  
37 regain mental competence in the foreseeable future, the defendant  
38 shall remain in the state hospital or other treatment facility or on  
39 outpatient status. Thereafter, at six-month intervals or until the  
40 defendant becomes mentally competent, where the defendant is

1 confined in a treatment facility, the medical director of the hospital  
2 or person in charge of the facility shall report in writing to the  
3 court and the community program director or a designee regarding  
4 the defendant's progress toward recovery of mental competence.  
5 Where the defendant is on outpatient status, after the initial 90-day  
6 report, the outpatient treatment staff shall report to the community  
7 program director on the defendant's progress toward recovery,  
8 and the community program director shall report to the court on  
9 this matter at six-month intervals. A copy of these reports shall be  
10 provided to the prosecutor and defense counsel by the court. If the  
11 report indicates that there is no substantial likelihood that the  
12 defendant will regain mental competence in the foreseeable future,  
13 the committing court shall order the defendant to be returned to  
14 the court for proceedings pursuant to paragraph (2) of subdivision  
15 (c) *no later than 10 days following receipt of the report, and the*  
16 *medical director of the state hospital or other treatment facility*  
17 *to which the defendant is confined shall promptly notify the defense*  
18 *counsel and the district attorney.* The court shall transmit a copy  
19 of its order to the community program director or a designee.

20 (2) Where the court has issued an order authorizing the treating  
21 facility to involuntarily administer antipsychotic medication to the  
22 defendant, the reports made at six-month intervals concerning the  
23 defendant's progress toward regaining competency shall also  
24 consider the issue of involuntary medication. Each report shall  
25 include, but is not limited to, all the following:

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

28 (B) If the defendant lacks capacity to make decisions concerning  
29 antipsychotic medication, whether the defendant risks serious harm  
30 to his or her physical or mental health if not treated with  
31 antipsychotic medication.

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

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

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

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

1 (G) How quickly the medication is likely to bring the defendant  
2 to competency.

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

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

7 (3) After reviewing the reports, the court shall determine whether  
8 or not grounds for the order authorizing involuntary administration  
9 of antipsychotic medication still exist and shall do one of the  
10 following:

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

14 (B) If the original grounds for involuntary medication no longer  
15 exist, and there is no other basis for involuntary administration of  
16 antipsychotic medication, the order for the involuntary  
17 administration of antipsychotic medication shall be vacated.

18 (C) If the original grounds for involuntary medication no longer  
19 exist, and the report states that there is another basis for involuntary  
20 administration of antipsychotic medication, the court shall set a  
21 hearing within 21 days to determine whether the order for the  
22 involuntary administration of antipsychotic medication shall be  
23 vacated or whether a new order for the involuntary administration  
24 of antipsychotic medication shall be issued. The hearing shall  
25 proceed as set forth in subparagraph (B) of paragraph (2) of  
26 subdivision (a).

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

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

38 (6) At each review by the court specified in this subdivision,  
39 the court shall determine if the security level of housing and  
40 treatment is appropriate and may make an order in accordance

1 with its determination. If the court determines that the defendant  
2 shall continue to be treated in the state hospital or on an outpatient  
3 basis, the court shall determine issues concerning administration  
4 of antipsychotic medication, as set forth in subparagraph (B) of  
5 paragraph (2) of subdivision (a).

6 (c) (1) At the end of three years from the date of commitment  
7 or a period of commitment equal to the maximum term of  
8 imprisonment provided by law for the most serious offense charged  
9 in the information, indictment, or misdemeanor complaint,  
10 whichever is shorter, *but no later than 90 days prior to the*  
11 *expiration of the defendant's term of commitment*, a defendant  
12 who has not recovered mental competence shall be returned to the  
13 committing court. The court shall notify the community program  
14 director or a designee of the return and of any resulting court  
15 orders.

16 (2) Whenever any defendant is returned to the court pursuant  
17 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this  
18 subdivision and it appears to the court that the defendant is gravely  
19 disabled, as defined in subparagraph (B) of paragraph (1) of  
20 subdivision (h) of Section 5008 of the Welfare and Institutions  
21 Code, the court shall order the conservatorship investigator of the  
22 county of commitment of the defendant to initiate conservatorship  
23 proceedings for the defendant pursuant to Chapter 3 (commencing  
24 with Section 5350) of Part 1 of Division 5 of the Welfare and  
25 Institutions Code. Any hearings required in the conservatorship  
26 proceedings shall be held in the superior court in the county that  
27 ordered the commitment. The court shall transmit a copy of the  
28 order directing initiation of conservatorship proceedings to the  
29 community program director or a designee, the sheriff and the  
30 district attorney of the county in which criminal charges are  
31 pending, and the defendant's counsel of record. The court shall  
32 notify the community program director or a designee, the sheriff  
33 and district attorney of the county in which criminal charges are  
34 pending, and the defendant's counsel of record of the outcome of  
35 the conservatorship proceedings.

36 (3) If a change in placement is proposed for a defendant who  
37 is committed pursuant to subparagraph (B) of paragraph (1) of  
38 subdivision (h) of Section 5008 of the Welfare and Institutions  
39 Code, the court shall provide notice and an opportunity to be heard  
40 with respect to the proposed placement of the defendant to the

1 sheriff and the district attorney of the county in which criminal  
2 charges are pending.

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

8 (d) The criminal action remains subject to dismissal pursuant  
9 to Section 1385. If the criminal action is dismissed, the court shall  
10 transmit a copy of the order of dismissal to the community program  
11 director or a designee.

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

18 (f) As used in this chapter, "community program director" means  
19 the person, agency, or entity designated by the State Department  
20 of State Hospitals pursuant to Section 1605 of this code and Section  
21 4360 of the Welfare and Institutions Code.

22 (g) For the purpose of this section, "secure treatment facility"  
23 shall not include, except for state mental hospitals, state  
24 developmental centers, and correctional treatment facilities, any  
25 facility licensed pursuant to Chapter 2 (commencing with Section  
26 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
27 3.2 (commencing with Section 1569) of, Division 2 of the Health  
28 and Safety Code, or any community board and care facility.

29 (h) Nothing in this section shall preclude a defendant from filing  
30 a petition for habeas corpus to challenge the continuing validity  
31 of an order authorizing a treatment facility or outpatient program  
32 to involuntarily administer antipsychotic medication to a person  
33 being treated as incompetent to stand trial.

34 ~~(i) This section shall become operative on July 1, 2012.~~

35 SEC. 2. If the Commission on State Mandates determines that  
36 this act contains costs mandated by the state, reimbursement to  
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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