

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE MAY 7, 2014

**SENATE BILL**

**No. 1412**

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**Introduced by Senator Nielsen**

February 21, 2014

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An act to amend Sections 1367, 1368, 1368.1, 1369, 1369.1, 1370, 1370.01, 1370.1, 1370.5, 1371, 1373, and 1375.5 of, to add Section 1370.02 to, and to repeal Section 1367.1 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1412, as amended, Nielsen. Criminal proceedings: mentally incompetent offenders.

(1) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the defendant to competency. Existing law credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the term of any imprisonment for which the defendant is sentenced.

This bill would, similarly, prohibit a person from having his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. The bill would establish a process by which the person's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the person to competency. ~~This~~ *The* bill would credit time spent by a

defendant in a state hospital or other facility as a result of commitment during the process toward the period of revocation or the remaining term of supervision that was suspended. If a defendant is found mentally incompetent during postrelease community supervision or parole revocation hearings, the bill would allow the court to order the defendant to undergo treatment, dismiss the pending revocation matter and return the defendant to supervision, in which case the bill would allow the court to modify the terms and conditions of supervision or refer the matter to the public guardian of the county to initiate conservatorship proceedings, or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. By increasing the duties of local officials, including the county mental health director and county public guardian, ~~this~~ *the* bill would impose a state-mandated local program.

If a person ~~is~~ subject to parole due to a conviction for an offense of first or 2nd degree murder or a registerable sex offense in which one or more of the victims of the offense was a child under 14 years of age *is found mentally incompetent*, the bill would require ~~the~~ *the* court to ~~remand~~ ~~the person to the custody of the Department of Corrections and Rehabilitation upon a finding of probable cause that the person violated a term or condition of parole, if the person is found mentally incompetent~~ *order the person to undergo treatment to restore mental competency. If his or her mental competency is not restored, the bill would establish procedures for his or her supervision or referral, as specified.*

The bill would also make conforming changes.

(2) During the pendency of an action in a case in which the defendant has been charged with a misdemeanor, if the defendant's behavior leads the judge to conclude that the defendant is mentally disordered and incompetent to stand trial, existing law requires the judge to state the conclusion in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally disordered. Existing law requires the court to order the defendant to be referred for evaluation and treatment, as specified, if counsel for the defendant informs the court that he or she believes the defendant is or may be mentally disordered.

This bill would repeal those provisions.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to 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 1367 of the Penal Code is amended to  
2 read:

3 1367. (a) A person cannot be tried or adjudged to punishment  
4 or have his or her probation, mandatory supervision, postrelease  
5 community supervision, or parole revoked while that person is  
6 mentally incompetent. A defendant is mentally incompetent for  
7 purposes of this chapter if, as a result of mental disorder or  
8 developmental disability, the defendant is unable to understand  
9 the nature of the criminal proceedings or to assist counsel in the  
10 conduct of a defense in a rational manner.

11 (b) Section 1370 shall apply to a person who is charged with a  
12 felony or alleged to have violated the terms of probation or  
13 mandatory supervision and is incompetent as a result of a mental  
14 disorder. Section 1370.01 shall apply to a person who is charged  
15 with a misdemeanor or misdemeanors only, or a violation of formal  
16 or informal probation for a misdemeanor, and the judge finds  
17 reason to believe that the defendant is mentally disordered, and  
18 may, as a result of the mental disorder, be incompetent to stand  
19 trial. Section 1370.1 shall apply to a person who is incompetent  
20 as a result of a developmental disability and shall apply to a person  
21 who is incompetent as a result of a mental disorder, but is also  
22 developmentally disabled. Section 1370.02 shall apply to a person  
23 alleged to have violated the terms of his or her postrelease  
24 community supervision or parole.

25 SEC. 2. Section 1367.1 of the Penal Code is repealed.

26 SEC. 3. Section 1368 of the Penal Code is amended to read:

27 1368. (a) If, during the pendency of an action and prior to  
28 judgment, or during revocation proceedings for a violation of  
29 probation, mandatory supervision, postrelease community  
30 supervision, or parole, a doubt arises in the mind of the judge as  
31 to the mental competence of the defendant, he or she shall state

1 that doubt in the record and inquire of the attorney for the defendant  
2 whether, in the opinion of the attorney, the defendant is mentally  
3 competent. If the defendant is not represented by counsel, the court  
4 shall appoint counsel. At the request of the defendant or his or her  
5 counsel or upon its own motion, the court shall recess the  
6 proceedings for as long as may be reasonably necessary to permit  
7 counsel to confer with the defendant and to form an opinion as to  
8 the mental competence of the defendant at that point in time.

9 (b) If counsel informs the court that he or she believes the  
10 defendant is or may be mentally incompetent, the court shall order  
11 that the question of the defendant's mental competence is to be  
12 determined in a hearing which is held pursuant to Sections 1368.1  
13 and 1369. If counsel informs the court that he or she believes the  
14 defendant is mentally competent, the court may nevertheless order  
15 a hearing. Any hearing shall be held in the superior court.

16 (c) Except as provided in Section 1368.1, when an order for a  
17 hearing into the present mental competence of the defendant has  
18 been issued, all proceedings in the criminal prosecution shall be  
19 suspended until the question of the present mental competence of  
20 the defendant has been determined.

21 If a jury has been impaneled and sworn to try the defendant, the  
22 jury shall be discharged only if it appears to the court that undue  
23 hardship to the jurors would result if the jury is retained on call.

24 If the defendant is declared mentally incompetent, the jury shall  
25 be discharged.

26 SEC. 4. Section 1368.1 of the Penal Code is amended to read:

27 1368.1. (a) If the action is on a complaint charging a felony,  
28 proceedings to determine mental competence shall be held prior  
29 to the filing of an information unless the counsel for the defendant  
30 requests a preliminary examination under the provisions of Section  
31 859b. At such preliminary examination, counsel for the defendant  
32 may (1) demur, (2) move to dismiss the complaint on the ground  
33 that there is not reasonable cause to believe that a felony has been  
34 committed and that the defendant is guilty thereof, or (3) make a  
35 motion under Section 1538.5.

36 (b) If the action is on a complaint charging a misdemeanor,  
37 counsel for the defendant may (1) demur, (2) move to dismiss the  
38 complaint on the ground that there is not reasonable cause to  
39 believe that a public offense has been committed and that the

1 defendant is guilty thereof, or (3) make a motion under Section  
2 1538.5.

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

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

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

16 SEC. 5. Section 1369 of the Penal Code is amended to read:

17 1369. Except as stated in subdivision (g), a trial by court or  
18 jury of the question of mental competence shall proceed in the  
19 following order:

20 (a) The court shall appoint a psychiatrist or licensed  
21 psychologist, and any other expert the court may deem appropriate,  
22 to examine the defendant. In any case where the defendant or the  
23 defendant's counsel informs the court that the defendant is not  
24 seeking a finding of mental incompetence, the court shall appoint  
25 two psychiatrists, licensed psychologists, or a combination thereof.  
26 One of the psychiatrists or licensed psychologists may be named  
27 by the defense and one may be named by the prosecution. The  
28 examining psychiatrists or licensed psychologists shall evaluate  
29 the nature of the defendant's mental disorder, if any, the  
30 defendant's ability or inability to understand the nature of the  
31 criminal proceedings or assist counsel in the conduct of a defense  
32 in a rational manner as a result of a mental disorder and, if within  
33 the scope of their licenses and appropriate to their opinions,  
34 whether or not treatment with antipsychotic medication is medically  
35 appropriate for the defendant and whether antipsychotic medication  
36 is likely to restore the defendant to mental competence. If an  
37 examining psychologist is of the opinion that antipsychotic  
38 medication may be medically appropriate for the defendant and  
39 that the defendant should be evaluated by a psychiatrist to  
40 determine if antipsychotic medication is medically appropriate,

1 the psychologist shall inform the court of this opinion and his or  
2 her recommendation as to whether a psychiatrist should examine  
3 the defendant. The examining psychiatrists or licensed  
4 psychologists shall also address the issues of whether the defendant  
5 has capacity to make decisions regarding antipsychotic medication  
6 and whether the defendant is a danger to self or others. If the  
7 defendant is examined by a psychiatrist and the psychiatrist forms  
8 an opinion as to whether or not treatment with antipsychotic  
9 medication is medically appropriate, the psychiatrist shall inform  
10 the court of his or her opinions as to the likely or potential side  
11 effects of the medication, the expected efficacy of the medication,  
12 possible alternative treatments, and whether it is medically  
13 appropriate to administer antipsychotic medication in the county  
14 jail. If it is suspected the defendant is developmentally disabled,  
15 the court shall appoint the director of the regional center for the  
16 developmentally disabled established under Division 4.5  
17 (commencing with Section 4500) of the Welfare and Institutions  
18 Code, or the designee of the director, to examine the defendant.  
19 The court may order the developmentally disabled defendant to  
20 be confined for examination in a residential facility or state  
21 hospital.

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

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

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

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

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

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

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

7 (g) Only a court trial is required to determine competency in  
8 any proceeding for a violation of probation, mandatory supervision,  
9 postrelease community supervision, or parole.

10 SEC. 6. Section 1369.1 of the Penal Code is amended to read:

11 1369.1. (a) As used in this chapter, “treatment facility”  
12 includes a county jail. Upon the concurrence of the county board  
13 of supervisors, the county mental health director, and the county  
14 sheriff, the jail may be designated to provide medically approved  
15 medication to defendants found to be mentally incompetent and  
16 unable to provide informed consent due to a mental disorder,  
17 pursuant to this chapter. In the case of Madera, Napa, and Santa  
18 Clara Counties, the concurrence shall be with the board of  
19 supervisors, the county mental health director, and the county  
20 sheriff or the chief of corrections. The provisions of Sections 1370  
21 and 1370.01 shall apply to antipsychotic medications provided in  
22 a county jail, provided, however, that the maximum period of time  
23 a defendant may be treated in a treatment facility pursuant to this  
24 section shall not exceed six months. The provisions of Section  
25 1370.02 shall apply to antipsychotic medications provided to a  
26 person in a county jail pending revocation of postrelease  
27 community supervision, provided, however, that the maximum  
28 period of time a defendant may be treated in a treatment facility  
29 pursuant to this section shall not exceed one year. The provisions  
30 of Section 1370 shall apply to antipsychotic medications provided  
31 to a person in a county jail pending revocation of mandatory  
32 supervision, provided, however, that the maximum period of time  
33 a defendant may be treated in a treatment facility pursuant to this  
34 section shall not exceed the remaining period of mandatory  
35 supervision imposed pursuant to subparagraph (B) of paragraph  
36 (5) of subdivision (h) of Section 1170.

37 (b) This section does not abrogate or limit any law enacted to  
38 ensure the due process rights set forth in *Sell v. United States*  
39 (2003) 539 U.S. 166.

1 (c) This section shall remain in effect only until January 1, 2016,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2016, deletes or extends that date.

4 SEC. 7. Section 1370 of the Penal Code is amended to read:

5 1370. (a) (1) (A) If the defendant is found mentally  
6 competent, the criminal process shall resume, the trial on the  
7 offense charged or hearing on the alleged violation shall proceed,  
8 and judgment may be pronounced.

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

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

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

36 (iii) If the action against the defendant who has been found  
37 mentally incompetent is on a complaint charging a felony offense  
38 specified in Section 290 and the defendant has been denied bail  
39 pursuant to subdivision (b) of Section 12 of Article I of the  
40 California Constitution because the court has found, based upon

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

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

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

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

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

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

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

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

1 facility. No person shall be admitted to a state hospital or other  
2 treatment facility or placed on outpatient status under this section  
3 without having been evaluated by the community program director  
4 or a designee. The community program director or designee shall  
5 evaluate the appropriate placement for the defendant between a  
6 state hospital or a local county jail treatment facility based upon  
7 guidelines provided by the State Department of State Hospitals.  
8 If a local county jail treatment facility is selected, the State  
9 Department of State Hospitals shall provide treatment at the county  
10 jail treatment facility and reimburse the county jail treatment  
11 facility for the reasonable costs of the bed during the treatment.  
12 The six-month limitation in Section 1369.1 shall not apply to  
13 individuals deemed incompetent to stand trial who are being treated  
14 to restore competency within a county jail treatment facility  
15 pursuant to this section.

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

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

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

35 (II) The defendant is a danger to others, in that the defendant  
36 has inflicted, attempted to inflict, or made a serious threat of  
37 inflicting substantial physical harm on another while in custody,  
38 or the defendant had inflicted, attempted to inflict, or made a  
39 serious threat of inflicting substantial physical harm on another  
40 that resulted in his or her being taken into custody, and the

1 defendant presents, as a result of mental disorder or mental defect,  
2 a demonstrated danger of inflicting substantial physical harm on  
3 others. Demonstrated danger may be based on an assessment of  
4 the defendant's present mental condition, including a consideration  
5 of past behavior of the defendant within six years prior to the time  
6 the defendant last attempted to inflict, inflicted, or threatened to  
7 inflict substantial physical harm on another, and other relevant  
8 evidence.

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

19 (ii) If the court finds any of the conditions described in clause  
20 (i) to be true, the court shall issue an order authorizing the treatment  
21 facility to involuntarily administer antipsychotic medication to the  
22 defendant when and as prescribed by the defendant's treating  
23 psychiatrist. The court shall not order involuntary administration  
24 of psychotropic medication under subclause (III) of clause (i)  
25 unless the court has first found that the defendant does not meet  
26 the criteria for involuntary administration of psychotropic  
27 medication under subclause (I) of clause (i) and does not meet the  
28 criteria under subclause (II) of clause (i).

29 (iii) In all cases, the treating hospital, facility, or program may  
30 administer medically appropriate antipsychotic medication  
31 prescribed by a psychiatrist in an emergency as described in  
32 subdivision (m) of Section 5008 of the Welfare and Institutions  
33 Code.

34 (iv) If the court has determined that the defendant has the  
35 capacity to make decisions regarding antipsychotic medication,  
36 and if the defendant, with advice of his or her counsel, consents,  
37 the court order of commitment shall include confirmation that  
38 antipsychotic medication may be given to the defendant as  
39 prescribed by a treating psychiatrist pursuant to the defendant's  
40 consent. The commitment order shall also indicate that, if the

1 defendant withdraws consent for antipsychotic medication, after  
2 the treating psychiatrist complies with the provisions of  
3 subparagraph (C), the defendant shall be returned to court for a  
4 hearing in accordance with subparagraphs (C) and (D) regarding  
5 whether antipsychotic medication shall be administered  
6 involuntarily.

7 (v) If the court has determined that the defendant has the  
8 capacity to make decisions regarding antipsychotic medication  
9 and if the defendant, with advice from his or her counsel, does not  
10 consent, the court order for commitment shall indicate that, after  
11 the treating psychiatrist complies with the provisions of  
12 subparagraph (C), the defendant shall be returned to court for a  
13 hearing in accordance with subparagraphs (C) and (D) regarding  
14 whether antipsychotic medication shall be administered  
15 involuntarily.

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

30 (C) If the defendant consented to antipsychotic medication as  
31 described in clause (iv) of subparagraph (B), but subsequently  
32 withdraws his or her consent, or, if involuntary antipsychotic  
33 medication was not ordered pursuant to clause (v) of subparagraph  
34 (B), and the treating psychiatrist determines that antipsychotic  
35 medication has become medically necessary and appropriate, the  
36 treating psychiatrist shall make efforts to obtain informed consent  
37 from the defendant for antipsychotic medication. If informed  
38 consent is not obtained from the defendant, and the treating  
39 psychiatrist is of the opinion that the defendant lacks capacity to  
40 make decisions regarding antipsychotic medication based on the

1 conditions described in subclause (I) or (II) of clause (i) of  
2 subparagraph (B), the treating psychiatrist shall certify whether  
3 the lack of capacity and any applicable conditions described above  
4 exist. That certification shall contain an assessment of the current  
5 mental status of the defendant and the opinion of the treating  
6 psychiatrist that involuntary antipsychotic medication has become  
7 medically necessary and appropriate.

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

- 30 (I) To ~~being~~ *be* given timely access to the defendant's records.
- 31 (II) To be present at the hearing, unless the defendant waives  
32 that right.
- 33 (III) To present evidence at the hearing.
- 34 (IV) To question persons presenting evidence supporting  
35 involuntary medication.
- 36 (V) To make reasonable requests for attendance of witnesses  
37 on the defendant's behalf.
- 38 (VI) To a hearing conducted in an impartial and informal  
39 manner.

1 (ii) If the administrative law judge determines that the defendant  
2 either meets the criteria specified in subclause (I) of clause (i) of  
3 subparagraph (B), or meets the criteria specified in subclause (II)  
4 of clause (i) of subparagraph (B), then antipsychotic medication  
5 may continue to be administered to the defendant for the 21-day  
6 certification period. Concurrently with the treating psychiatrist's  
7 certification, the treating psychiatrist shall file a copy of the  
8 certification and a petition with the court for issuance of an order  
9 to administer antipsychotic medication beyond the 21-day  
10 certification period. For purposes of this subparagraph, the treating  
11 psychiatrist shall not be required to pay or deposit any fee for the  
12 filing of the petition or other document or paper related to the  
13 petition.

14 (iii) If the administrative law judge disagrees with the  
15 certification, medication may not be administered involuntarily  
16 until the court determines that antipsychotic medication should be  
17 administered pursuant to this section.

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

23 (v) If, as a result of the hearing, the court determines that  
24 antipsychotic medication should be administered beyond the  
25 certification period, the court shall issue an order authorizing the  
26 administration of that medication.

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

31 (3) When the court orders that the defendant be confined in a  
32 state hospital or other public or private treatment facility, the court  
33 shall provide copies of the following documents which shall be  
34 taken with the defendant to the state hospital or other treatment  
35 facility where the defendant is to be confined:

36 (A) The commitment order, including a specification of the  
37 charges.

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

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

4 (D) State summary criminal history information.

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

7 (F) Any court-ordered psychiatric examination or evaluation  
8 reports.

9 (G) The community program director's placement  
10 recommendation report.

11 (H) Records of any finding of mental incompetence pursuant  
12 to this chapter arising out of a complaint charging a felony offense  
13 specified in Section 290 or any pending Section 1368 proceeding  
14 arising out of a charge of a Section 290 offense.

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

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

29 (6) (A) If the defendant is committed or transferred to a state  
30 hospital pursuant to this section, the court may, upon receiving the  
31 written recommendation of the medical director of the state hospital  
32 and the community program director that the defendant be  
33 transferred to a public or private treatment facility approved by  
34 the community program director, order the defendant transferred  
35 to that facility. If the defendant is committed or transferred to a  
36 public or private treatment facility approved by the community  
37 program director, the court may, upon receiving the written  
38 recommendation of the community program director, transfer the  
39 defendant to a state hospital or to another public or private  
40 treatment facility approved by the community program director.

1 In the event of dismissal of the criminal charges before the  
2 defendant recovers competence, the person shall be subject to the  
3 applicable provisions of the Lanterman-Petris-Short Act (Part 1  
4 (commencing with Section 5000) of Division 5 of the Welfare and  
5 Institutions Code). Where either the defendant or the prosecutor  
6 chooses to contest either kind of order of transfer, a petition may  
7 be filed in the court for a hearing, which shall be held if the court  
8 determines that sufficient grounds exist. At the hearing, the  
9 prosecuting attorney or the defendant may present evidence bearing  
10 on the order of transfer. The court shall use the same standards as  
11 are used in conducting probation revocation hearings pursuant to  
12 Section 1203.2.

13 Prior to making an order for transfer under this section, the court  
14 shall notify the defendant, the attorney of record for the defendant,  
15 the prosecuting attorney, and the community program director or  
16 a designee.

17 (B) If the defendant is initially committed to a state hospital or  
18 secure treatment facility pursuant to clause (ii) or (iii) of  
19 subparagraph (B) of paragraph (1) and is subsequently transferred  
20 to any other facility, copies of the documents specified in paragraph  
21 (3) shall be taken with the defendant to each subsequent facility  
22 to which the defendant is transferred. The transferring facility shall  
23 also notify the appropriate law enforcement agency or agencies  
24 having local jurisdiction at the site of the new facility that the  
25 defendant is a person subject to clause (ii) or (iii) of subparagraph  
26 (B) of paragraph (1).

27 (7) An order by the court authorizing involuntary medication  
28 of the defendant shall be valid for no more than one year. The  
29 court shall review the order six months after the order was made  
30 to determine if the grounds for the authorization remain. In the  
31 review, the court shall consider the reports of the treating  
32 psychiatrist or psychiatrists and the defendant's patients' rights  
33 advocate or attorney. The court may require testimony from the  
34 treating psychiatrist or psychiatrists and the patients' rights  
35 advocate or attorney, if necessary. The court may continue the  
36 order authorizing involuntary medication for up to another six  
37 months, or vacate the order, or make any other appropriate order.

38 (b) (1) Within 90 days of a commitment made pursuant to  
39 subdivision (a), the medical director of the state hospital or other  
40 treatment facility to which the defendant is confined shall make a

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

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

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

39 (B) If the defendant lacks capacity to make decisions concerning  
40 antipsychotic medication, whether the defendant risks serious harm

1 to his or her physical or mental health if not treated with  
2 antipsychotic medication.

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

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

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

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

11 (G) How quickly the medication is likely to bring the defendant  
12 to competency.

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

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

17 (3) After reviewing the reports, the court shall determine whether  
18 or not grounds for the order authorizing involuntary administration  
19 of antipsychotic medication still exist and shall do one of the  
20 following:

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

24 (B) If the original grounds for involuntary medication no longer  
25 exist, and there is no other basis for involuntary administration of  
26 antipsychotic medication, the order for the involuntary  
27 administration of antipsychotic medication shall be vacated.

28 (C) If the original grounds for involuntary medication no longer  
29 exist, and the report states that there is another basis for involuntary  
30 administration of antipsychotic medication, the court shall set a  
31 hearing within 21 days to determine whether the order for the  
32 involuntary administration of antipsychotic medication shall be  
33 vacated or whether a new order for the involuntary administration  
34 of antipsychotic medication shall be issued. The hearing shall  
35 proceed as set forth in subparagraph (B) of paragraph (2) of  
36 subdivision (a).

37 (4) Any defendant who has been committed or has been on  
38 outpatient status for 18 months and is still hospitalized or on  
39 outpatient status shall be returned to the committing court where  
40 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 (5) 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 (6) 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. If the court determines that the defendant  
12 shall continue to be treated in the state hospital or on an outpatient  
13 basis, the court shall determine issues concerning administration  
14 of antipsychotic medication, as set forth in subparagraph (B) of  
15 paragraph (2) of subdivision (a).

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

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

1 pending, and the defendant’s counsel of record. The court shall  
2 notify the community program director or a designee, the sheriff  
3 and district attorney of the county in which criminal charges are  
4 pending, and the defendant’s counsel of record of the outcome of  
5 the conservatorship proceedings.

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

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

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

32 (e) If the criminal action against the defendant is dismissed, the  
33 defendant shall be released from any commitment ordered under  
34 this section, but without prejudice to the initiation of any  
35 proceedings that may be appropriate under the  
36 ~~Lanterman-Petris-Short Act, Part Act (Part 1~~ (commencing with  
37 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~  
38 *Code*).

39 (f) As used in this chapter, “community program director” means  
40 the person, agency, or entity designated by the State Department

1 of State Hospitals pursuant to Section 1605 of this code and Section  
2 4360 of the Welfare and Institutions Code.

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

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

15 SEC. 8. Section 1370.01 of the Penal Code is amended to read:

16 1370.01. (a) (1) If the defendant is found mentally competent,  
17 the criminal process shall resume, the trial on the offense charged  
18 shall proceed, and judgment may be pronounced. If the defendant  
19 is found mentally incompetent, the trial, judgment, or hearing on  
20 the alleged violation shall be suspended until the person becomes  
21 mentally competent, and the court shall order that (A) in the  
22 meantime, the defendant be delivered by the sheriff to an available  
23 public or private treatment facility approved by the county mental  
24 health director that will promote the defendant’s speedy restoration  
25 to mental competence, or placed on outpatient status as specified  
26 in this section, and (B) upon the filing of a certificate of restoration  
27 to competence, the defendant be returned to court in accordance  
28 with Section 1372. The court shall transmit a copy of its order to  
29 the county mental health director or his or her designee.

30 (2) Prior to making the order directing that the defendant be  
31 confined in a treatment facility or placed on outpatient status, the  
32 court shall proceed as follows:

33 (A) The court shall order the county mental health director or  
34 his or her designee to evaluate the defendant and to submit to the  
35 court within 15 judicial days of the order a written recommendation  
36 as to whether the defendant should be required to undergo  
37 outpatient treatment, or committed to a treatment facility. No  
38 person shall be admitted to a treatment facility or placed on  
39 outpatient status under this section without having been evaluated  
40 by the county mental health director or his or her designee. No

1 person shall be admitted to a state hospital under this section unless  
2 the county mental health director finds that there is no less  
3 restrictive appropriate placement available and the county mental  
4 health director has a contract with the State Department of State  
5 Hospitals for these placements.

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 antipsychotic medication, and shall proceed as follows:

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

19 (ii) If the defendant does not consent to the administration of  
20 medication, the court shall hear and determine whether any of the  
21 following is true:

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

36 (II) The defendant is a danger to others, in that the defendant  
37 has inflicted, attempted to inflict, or made a serious threat of  
38 inflicting substantial physical harm on another while in custody,  
39 or the defendant had inflicted, attempted to inflict, or made a  
40 serious threat of inflicting substantial physical harm on another

1 that resulted in his or her being taken into custody, and the  
2 defendant presents, as a result of mental disorder or mental defect,  
3 a demonstrated danger of inflicting substantial physical harm on  
4 others. Demonstrated danger may be based on an assessment of  
5 the defendant's present mental condition, including a consideration  
6 of past behavior of the defendant within six years prior to the time  
7 the defendant last attempted to inflict, inflicted, or threatened to  
8 inflict substantial physical harm on another, and other relevant  
9 evidence.

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

20 (iii) If the court finds any of the conditions described in clause  
21 (ii) to be true, the court shall issue an order authorizing the  
22 treatment facility to involuntarily administer antipsychotic  
23 medication to the defendant when and as prescribed by the  
24 defendant's treating psychiatrist. The court shall not order  
25 involuntary administration of psychotropic medication under  
26 subclause (III) of clause (ii) unless the court has first found that  
27 the defendant does not meet the criteria for involuntary  
28 administration of psychotropic medication under subclause (I) of  
29 clause (ii) and does not meet the criteria under subclause (II) of  
30 clause (ii).

31 (iv) In all cases, the treating hospital, facility, or program may  
32 administer medically appropriate antipsychotic medication  
33 prescribed by a psychiatrist in an emergency as described in  
34 subdivision (m) of Section 5008 of the Welfare and Institutions  
35 Code.

36 (v) Any report made pursuant to subdivision (b) shall include  
37 a description of any antipsychotic medication administered to the  
38 defendant and its effects and side effects, including effects on the  
39 defendant's appearance or behavior that would affect the  
40 defendant's ability to understand the nature of the criminal

1 proceedings or to assist counsel in the conduct of a defense in a  
2 reasonable manner. During the time the defendant is confined in  
3 a state hospital or other treatment facility or placed on outpatient  
4 status, either the defendant or the people may request that the court  
5 review any order made pursuant to this subdivision. The defendant,  
6 to the same extent enjoyed by other patients in the state hospital  
7 or other treatment facility, shall have the right to contact the  
8 patients' rights advocate regarding his or her rights under this  
9 section.

10 (C) If the defendant consented to antipsychotic medication as  
11 described in clause (i) of subparagraph (B), but subsequently  
12 withdraws his or her consent, or, if involuntary antipsychotic  
13 medication was not ordered pursuant to clause (ii) of subparagraph  
14 (B), and the treating psychiatrist determines that antipsychotic  
15 medication has become medically necessary and appropriate, the  
16 treating psychiatrist shall make efforts to obtain informed consent  
17 from the defendant for antipsychotic medication. If informed  
18 consent is not obtained from the defendant, and the treating  
19 psychiatrist is of the opinion that the defendant lacks capacity to  
20 make decisions regarding antipsychotic medication as specified  
21 in subclause (I) of clause (ii) of subparagraph (B), or that the  
22 defendant is a danger to others as specified in subclause (II) of  
23 clause (ii) of subparagraph (B), the committing court shall be  
24 notified of this, including an assessment of the current mental  
25 status of the defendant and the opinion of the treating psychiatrist  
26 that involuntary antipsychotic medication has become medically  
27 necessary and appropriate. The court shall provide copies of the  
28 report to the prosecuting attorney and to the attorney representing  
29 the defendant and shall set a hearing to determine whether  
30 involuntary antipsychotic medication should be ordered in the  
31 manner described in subparagraph (B).

32 (3) When the court, after considering the placement  
33 recommendation of the county mental health director required in  
34 paragraph (2), orders that the defendant be confined in a public or  
35 private treatment facility, the court shall provide copies of the  
36 following documents which shall be taken with the defendant to  
37 the treatment facility where the defendant is to be confined:

38 (A) The commitment order, including a specification of the  
39 charges.

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

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

6 (D) State summary criminal history information.

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

9 (F) Any court-ordered psychiatric examination or evaluation  
10 reports.

11 (G) The county mental health director's placement  
12 recommendation report.

13 (4) A person subject to commitment under this section may be  
14 placed on outpatient status under the supervision of the county  
15 mental health director or his or her designee by order of the court  
16 in accordance with the procedures contained in Title 15  
17 (commencing with Section 1600) except that where the term  
18 "community program director" appears the term "county mental  
19 health director" shall be substituted.

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

37 Prior to making an order for transfer under this section, the court  
38 shall notify the defendant, the attorney of record for the defendant,  
39 the prosecuting attorney, and the county mental health director or  
40 his or her designee.

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

33 (c) (1) If, at the end of one year from the date of commitment  
34 or a period of commitment equal to the maximum term of  
35 imprisonment provided by law for the most serious offense charged  
36 in the misdemeanor complaint, whichever is shorter, the defendant  
37 has not recovered mental competence, the defendant shall be  
38 returned to the committing court. The court shall notify the county  
39 mental health director or his or her designee of the return and of  
40 any resulting court orders.

1 (2) Whenever any defendant is returned to the court pursuant  
2 to subdivision (b) or paragraph (1) of this subdivision and it appears  
3 to the court that the defendant is gravely disabled, as defined in  
4 subparagraph (A) of paragraph (1) of subdivision (h) of Section  
5 5008 of the Welfare and Institutions Code, the court shall order  
6 the conservatorship investigator of the county of commitment of  
7 the defendant to initiate conservatorship proceedings for the  
8 defendant pursuant to Chapter 3 (commencing with Section 5350)  
9 of Part 1 of Division 5 of the Welfare and Institutions Code. Any  
10 hearings required in the conservatorship proceedings shall be held  
11 in the superior court in the county that ordered the commitment.  
12 The court shall transmit a copy of the order directing initiation of  
13 conservatorship proceedings to the county mental health director  
14 or his or her designee and shall notify the county mental health  
15 director or his or her designee of the outcome of the proceedings.

16 (d) The criminal action remains subject to dismissal pursuant  
17 to Section 1385. If the criminal action is dismissed, the court shall  
18 transmit a copy of the order of dismissal to the county mental  
19 health director or his or her designee.

20 (e) If the criminal charge against the defendant is dismissed,  
21 the defendant shall be released from any commitment ordered  
22 under this section, but without prejudice to the initiation of any  
23 proceedings which may be appropriate under Part 1 (commencing  
24 with Section 5000) of Division 5 of the Welfare and Institutions  
25 Code.

26 SEC. 9. Section 1370.02 is added to the Penal Code, to read:

27 1370.02. (a) If the defendant is found mentally competent  
28 during a postrelease community supervision or parole revocation  
29 hearing, the revocation proceedings shall resume. The formal  
30 hearing on the revocation shall occur within a reasonable time  
31 after resumption of the proceedings, but in no event may the  
32 defendant be detained in custody for over 180 days from the date  
33 of arrest.

34 (b) If the defendant is found mentally incompetent, the court,  
35 based upon consideration of the information and recommendations  
36 contained in the expert reports required by Section 1369, shall  
37 have discretion to order any of the following:

38 (1) (A) If the court determines that there is a reasonable  
39 likelihood that the defendant may be restored to competency and  
40 returned to court to face the revocation proceedings no later than

1 180 days from the date of the arrest of the defendant, the court  
2 may order the defendant to undergo treatment as authorized by  
3 Section 1370 or 1370.1 for restoring the defendant to competency,  
4 except that:

5 (i) The initial written progress report due to the court pursuant  
6 to subdivision (b) of Section 1370 shall be provided to the court  
7 within 45 days and subsequent progress reports shall be provided  
8 to the court at two-month intervals.

9 (ii) The initial written progress report due to the court under  
10 subdivision (b) of Section 1370.1 shall be provided to the court  
11 within 45 days and subsequent progress reports shall be provided  
12 within 90 days.

13 (B) If the defendant is restored to competency within 180 days  
14 of arrest, the defendant shall be returned to court under the  
15 procedures required by Section 1372.

16 (C) If the defendant is not restored to competency within 180  
17 days of arrest, the defendant shall be returned to court and the court  
18 shall proceed under paragraph (2) or (3).

19 (2) Dismiss the pending revocation matter and return the  
20 defendant to supervision. If the matter is dismissed pursuant to  
21 this paragraph, the court may also:

22 (A) Modify the terms and conditions of supervision to include  
23 appropriate mental health treatment.

24 (B) Refer the matter to the public guardian of the county of  
25 commitment to initiate conservatorship proceedings.

26 (3) Refer the matter to any local mental health court, reentry  
27 court, or other collaborative justice court available for improving  
28 the mental health of the defendant.

29 (c) Notwithstanding any other law, if a person subject to parole  
30 pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of  
31 Section 3000 is found mentally incompetent, the court, ~~upon a~~  
32 ~~finding of probable cause that the person violated a term or~~  
33 ~~condition of parole, shall remand the person to the custody of the~~  
34 ~~Department of Corrections and Rehabilitation and the jurisdiction~~  
35 ~~of the Board of Parole Hearings for the purpose of future parole~~  
36 ~~consideration. If the court finds no probable cause to believe that~~  
37 ~~the person violated a term or condition of parole, the court may~~  
38 ~~proceed under paragraph (2) or (3) of subdivision (b), or both shall~~  
39 *order the person to undergo treatment pursuant to Section 1370*  
40 *for restoring the person to competency, except that if the person*

1 *is not restored to competency within the maximum period of*  
2 *confinement and the court dismisses the revocation, the court shall*  
3 *return the person to parole supervision, refer the matter to the*  
4 *public guardian of the county of commitment to initiate*  
5 *conservatorship proceedings, or refer the person to other*  
6 *appropriate mental health treatment based upon any*  
7 *recommendations by the parole agent and mental health experts.*

8 SEC. 10. Section 1370.1 of the Penal Code is amended to read:

9 1370.1. (a) (1) (A) If the defendant is found mentally  
10 competent, the criminal process shall resume, the trial on the  
11 offense charged or hearing on the alleged violation shall proceed,  
12 and judgment may be pronounced.

13 (B) If the defendant is found mentally incompetent and is  
14 developmentally disabled, the trial or judgment shall be suspended  
15 until the defendant becomes mentally competent.

16 (i) Except as provided in clause (ii) or (iii), the court shall  
17 consider a recommendation for placement, which recommendation  
18 shall be made to the court by the director of a regional center or  
19 designee. In the meantime, the court shall order that the mentally  
20 incompetent defendant be delivered by the sheriff or other person  
21 designated by the court to a state hospital or developmental center  
22 for the care and treatment of the developmentally disabled or any  
23 other available residential facility approved by the director of a  
24 regional center for the developmentally disabled established under  
25 Division 4.5 (commencing with Section 4500) of the Welfare and  
26 Institutions Code as will promote the defendant's speedy attainment  
27 of mental competence, or be placed on outpatient status pursuant  
28 to the provisions of Section 1370.4 and Title 15 (commencing with  
29 Section 1600).

30 (ii) However, if the action against the defendant who has been  
31 found mentally incompetent is on a complaint charging a felony  
32 offense specified in Section 290, the prosecutor shall determine  
33 whether the defendant previously has been found mentally  
34 incompetent to stand trial pursuant to this chapter on a charge of  
35 a Section 290 offense, or whether the defendant is currently the  
36 subject of a pending Section 1368 proceeding arising out of a  
37 charge of a Section 290 offense. If either determination is made,  
38 the prosecutor shall so notify the court and defendant in writing.  
39 After this notification, and opportunity for hearing, the court shall  
40 order that the defendant be delivered by the sheriff to a state

1 hospital or other secure treatment facility for the care and treatment  
2 of the developmentally disabled unless the court makes specific  
3 findings on the record that an alternative placement would provide  
4 more appropriate treatment for the defendant and would not pose  
5 a danger to the health and safety of others.

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

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

23 (C) Upon becoming competent, the court shall order that the  
24 defendant be returned to the committing court pursuant to the  
25 procedures set forth in paragraph (2) of subdivision (a) of Section  
26 1372 or by another person designated by the court. The court shall  
27 further determine conditions under which the person may be absent  
28 from the placement for medical treatment, social visits, and other  
29 similar activities. Required levels of supervision and security for  
30 these activities shall be specified.

31 (D) The court shall transmit a copy of its order to the regional  
32 center director or designee and to the Director of Developmental  
33 Services.

34 (E) A defendant charged with a violent felony may not be placed  
35 in a facility or delivered to a state hospital, developmental center,  
36 or residential facility pursuant to this subdivision unless the facility,  
37 state hospital, developmental center, or residential facility has a  
38 secured perimeter or a locked and controlled treatment facility,  
39 and the judge determines that the public safety will be protected.

1 (F) For purposes of this paragraph, “violent felony” means an  
2 offense specified in subdivision (c) of Section 667.5.

3 (G) A defendant charged with a violent felony may be placed  
4 on outpatient status, as specified in Section 1370.4 or 1600, only  
5 if the court finds that the placement will not pose a danger to the  
6 health or safety of others.

7 (H) As used in this section, “developmental disability” means  
8 a disability that originates before an individual attains 18 years of  
9 age, continues, or can be expected to continue, indefinitely and  
10 constitutes a substantial handicap for the individual, and shall not  
11 include other handicapping conditions that are solely physical in  
12 nature. As defined by the Director of Developmental Services, in  
13 consultation with the Superintendent of Public Instruction, this  
14 term shall include intellectual disability, cerebral palsy, epilepsy,  
15 and autism. This term shall also include handicapping conditions  
16 found to be closely related to intellectual disability or to require  
17 treatment similar to that required for individuals with an intellectual  
18 disability, but shall not include other handicapping conditions that  
19 are solely physical in nature.

20 (2) Prior to making the order directing that the defendant be  
21 confined in a state hospital, developmental center, or other  
22 residential facility, or be placed on outpatient status, the court shall  
23 order the regional center director or designee to evaluate the  
24 defendant and to submit to the court within 15 judicial days of the  
25 order a written recommendation as to whether the defendant should  
26 be committed to a state hospital or developmental center or to any  
27 other available residential facility approved by the regional center  
28 director. A person shall not be admitted to a state hospital,  
29 developmental center, or other residential facility or accepted for  
30 outpatient status under Section 1370.4 without having been  
31 evaluated by the regional center director or designee.

32 (3) When the court orders that the defendant be confined in a  
33 state hospital or other secure treatment facility pursuant to clause  
34 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall  
35 provide copies of the following documents which shall be taken  
36 with the defendant to the state hospital or other secure treatment  
37 facility where the defendant is to be confined:

38 (A) State summary criminal history information.

39 (B) Any arrest reports prepared by the police department or  
40 other law enforcement agency.

1 (C) Records of a finding of mental incompetence pursuant to  
2 this chapter arising out of a complaint charging a felony offense  
3 specified in Section 290 or a pending Section 1368 proceeding  
4 arising out of a charge of a Section 290 offense.

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

15 (5) (A) If the defendant is committed or transferred to a state  
16 hospital or developmental center pursuant to this section, the court  
17 may, upon receiving the written recommendation of the executive  
18 director of the state hospital or developmental center and the  
19 regional center director that the defendant be transferred to a  
20 residential facility approved by the regional center director, order  
21 the defendant transferred to that facility. If the defendant is  
22 committed or transferred to a residential facility approved by the  
23 regional center director, the court may, upon receiving the written  
24 recommendation of the regional center director, transfer the  
25 defendant to a state hospital or developmental center or to another  
26 residential facility approved by the regional center director.

27 In the event of dismissal of the criminal action or revocation  
28 proceedings before the defendant recovers competence, the person  
29 shall be subject to the applicable provisions of the  
30 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
31 5000) of Division 5 of the Welfare and Institutions Code) or to  
32 commitment or detention pursuant to a petition filed pursuant to  
33 Section 6502 of the Welfare and Institutions Code.

34 The defendant or prosecuting attorney may contest either kind  
35 of order of transfer by filing a petition with the court for a hearing,  
36 which shall be held if the court determines that sufficient grounds  
37 exist. At the hearing, the prosecuting attorney or the defendant  
38 may present evidence bearing on the order of transfer. The court  
39 shall use the same standards as used in conducting probation  
40 revocation hearings pursuant to Section 1203.2.

1 Prior to making an order for transfer under this section, the court  
2 shall notify the defendant, the attorney of record for the defendant,  
3 the prosecuting attorney, and the regional center director or  
4 designee.

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

14 (b) (1) Within 90 days of admission of a person committed  
15 pursuant to subdivision (a), the executive director or designee of  
16 the state hospital, developmental center, or other facility to which  
17 the defendant is committed, or the outpatient supervisor where the  
18 defendant is placed on outpatient status, shall make a written report  
19 to the committing court and the regional center director or a  
20 designee concerning the defendant's progress toward becoming  
21 mentally competent. If the defendant has not become mentally  
22 competent, but the report discloses a substantial likelihood the  
23 defendant will become mentally competent within the next 90  
24 days, the court may order that the defendant shall remain in the  
25 state hospital, developmental center, or other facility or on  
26 outpatient status for that period of time. Within 150 days of an  
27 admission made pursuant to subdivision (a) or if the defendant  
28 becomes mentally competent, the executive director or designee  
29 of the hospital or developmental center or person in charge of the  
30 facility or the outpatient supervisor shall report to the court and  
31 the regional center director or his or her designee regarding the  
32 defendant's progress toward becoming mentally competent. The  
33 court shall provide to the prosecutor and defense counsel copies  
34 of all reports under this section. If the report indicates that there  
35 is no substantial likelihood that the defendant has become mentally  
36 competent, the committing court shall order the defendant to be  
37 returned to the court for proceedings pursuant to paragraph (2) of  
38 subdivision (c). The court shall transmit a copy of its order to the  
39 regional center director or designee and to the executive director  
40 of the developmental center.

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

8 (3) If it is determined by the court that no treatment for the  
9 defendant's mental impairment is being conducted, the defendant  
10 shall be returned to the committing court. A copy of this order  
11 shall be sent to the regional center director or designee and to the  
12 executive director of the developmental center.

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

17 (c) (1) (A) At the end of three years from the date of  
18 commitment or a period of commitment equal to the maximum  
19 term of imprisonment provided by law for the most serious offense  
20 charged in the information, indictment, or misdemeanor complaint,  
21 or the maximum term of imprisonment provided by law for a  
22 violation of probation or mandatory supervision, whichever is  
23 shorter, a defendant who has not become mentally competent shall  
24 be returned to the committing court.

25 (B) The court shall notify the regional center director or designee  
26 and the executive director of the developmental center of that  
27 return and of any resulting court orders.

28 (2) (A) Except as provided in subparagraph (B), in the event  
29 of dismissal of the criminal charges before the defendant becomes  
30 mentally competent, the defendant shall be subject to the applicable  
31 provisions of the Lanterman-Petris-Short Act (Part 1 (commencing  
32 with Section 5000) of Division 5 of the Welfare and Institutions  
33 Code), or to commitment and detention pursuant to a petition filed  
34 pursuant to Section 6502 of the Welfare and Institutions Code. If  
35 it is found that the person is not subject to commitment or detention  
36 pursuant to the applicable provision of the Lanterman-Petris-Short  
37 Act (Part 1 (commencing with Section 5000) of Division 5 of the  
38 Welfare and Institutions Code) or to commitment or detention  
39 pursuant to a petition filed pursuant to Section 6502 of the Welfare  
40 and Institutions Code, the individual shall not be subject to further

1 confinement pursuant to this article and the criminal action remains  
2 subject to dismissal pursuant to Section 1385. The court shall notify  
3 the regional center director and the executive director of the  
4 developmental center of any dismissal.

5 (B) In revocation proceedings alleging a violation of mandatory  
6 supervision in which the defendant remains incompetent upon  
7 return to court under subparagraph (A), the defendant shall be  
8 subject to the applicable provisions of the Lanterman-Petris-Short  
9 Act (Part 1 (commencing with Section 5000) of Division 5 of the  
10 Welfare and Institutions Code), or to commitment and detention  
11 pursuant to a petition filed pursuant to Section 6502 of the Welfare  
12 and Institutions Code. If it is found that the person is not subject  
13 to commitment or detention pursuant to the applicable provision  
14 of the Lanterman-Petris-Short Act (Part 1 (commencing with  
15 Section 5000) of Division 5 of the Welfare and Institutions Code)  
16 or to commitment or detention pursuant to a petition filed pursuant  
17 to Section 6502 of the Welfare and Institutions Code, the court  
18 shall reinstate mandatory supervision and modify the terms and  
19 conditions of supervision to include appropriate mental health  
20 treatment or refer the matter to a local mental health court, reentry  
21 court, or other collaborative justice court available for improving  
22 the mental health of the defendant. Actions alleging a violation of  
23 mandatory supervision shall not be subject to dismissal under  
24 Section 1385.

25 (d) Except as provided in subparagraph (B) of paragraph (2) of  
26 subdivision (c), the criminal action remains subject to dismissal  
27 pursuant to Section 1385. If at any time prior to the maximum  
28 period of time allowed for proceedings under this article, the  
29 regional center director concludes that the behavior of the defendant  
30 related to the defendant's criminal offense has been eliminated  
31 during time spent in court-ordered programs, the court may, upon  
32 recommendation of the regional center director, dismiss the  
33 criminal charges. The court shall transmit a copy of any order of  
34 dismissal to the regional center director and to the executive  
35 director of the developmental center.

36 (e) 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, a  
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 a community board and care facility.

3 SEC. 11. Section 1370.5 of the Penal Code is amended to read:

4 1370.5. (a) A person committed to a state hospital or other  
5 public or private mental health facility pursuant to the provisions  
6 of Section 1370, 1370.01, 1370.02, or 1370.1, who escapes from  
7 or who escapes while being conveyed to or from a state hospital  
8 or facility, is punishable by imprisonment in a county jail not to  
9 exceed one year or in the state prison for a determinate term of  
10 one year and one day. The term of imprisonment imposed pursuant  
11 to this section shall be served consecutively to any other sentence  
12 or commitment.

13 (b) The medical director or person in charge of a state hospital  
14 or other public or private mental health facility to which a person  
15 has been committed pursuant to the provisions of Section 1370,  
16 1370.01, 1370.02, or 1370.1 shall promptly notify the chief of  
17 police of the city in which the hospital or facility is located, or the  
18 sheriff of the county if the hospital or facility is located in an  
19 unincorporated area, of the escape of the person, and shall request  
20 the assistance of the chief of police or sheriff in apprehending the  
21 person, and shall within 48 hours of the escape of the person orally  
22 notify the court that made the commitment, the prosecutor in the  
23 case, and the Department of Justice of the escape.

24 SEC. 12. Section 1371 of the Penal Code is amended to read:

25 1371. The commitment of the defendant, as described in  
26 Section 1370, 1370.1, or 1370.02, exonerates his or her bail, or  
27 entitles a person, authorized to receive the property of the  
28 defendant, to a return of any money he or she may have deposited  
29 instead of bail, or gives, to the person or persons found by the court  
30 to have deposited any money instead of bail on behalf of the  
31 defendant, a right to the return of that money.

32 SEC. 13. Section 1373 of the Penal Code is amended to read:

33 1373. The expense of sending the defendant to the state hospital  
34 or other facility, and of bringing him *or her* back, are chargeable  
35 to the county in which the indictment was found, information was  
36 filed, or revocation proceeding was held; but the county may  
37 recover ~~them~~ *the expense* from the estate of the defendant, if he  
38 *or she* has any, or from a relative, bound to provide for and  
39 maintain him *or her*.

40 SEC. 14. Section 1375.5 of the Penal Code is amended to read:

1 1375.5. (a) Time spent by a defendant in a hospital or other  
2 facility as a result of a commitment therein as a mentally  
3 incompetent pursuant to this chapter shall be credited on the term  
4 of imprisonment, if any, for which the defendant is sentenced in  
5 the criminal case which was suspended pursuant to Section 1370  
6 or 1370.1.

7 (b) Time spent by an offender in a hospital or other facility as  
8 a result of a commitment as a mentally incompetent pursuant to  
9 Section 1370.02 shall be credited toward any period of revocation  
10 or remaining term of supervision that was suspended.

11 (c) As used in this section, “time spent in a hospital or other  
12 facility” includes days a defendant is treated as an outpatient  
13 pursuant to Title 15 (commencing with Section 1600) of Part 2.

14 SEC. 15. If the Commission on State Mandates determines  
15 that this act contains costs mandated by the state, reimbursement  
16 to local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.