

AMENDED IN ASSEMBLY AUGUST 19, 2014

AMENDED IN ASSEMBLY JUNE 23, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE MAY 7, 2014

SENATE BILL

No. 1412

Introduced by Senator Nielsen

February 21, 2014

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. ~~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~~ *require* 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~~ *court, using the least restrictive option that will meet the mental health needs of the defendant,* to modify the terms and conditions of supervision or refer the matter to the public guardian of the county to initiate conservatorship proceedings, ~~or to include appropriate mental health treatment,~~ 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.~~ *defendant, or, if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the defendant, refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings, as specified.* By increasing the duties of local officials, including the county mental health director and county public guardian, the bill would impose a state-mandated local program.

If a person 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 court to 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.

If a conservatorship is established for a defendant or parolee pursuant to the above-described provisions, the bill would prohibit the county or the Department of Corrections and Rehabilitation from compassionately releasing the defendant or parolee or otherwise causing the termination of his or her supervision or parole based on the establishment of that conservatorship.

(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) This bill would incorporate additional changes to Section 1370 of the Penal Code, proposed by AB 2186 and AB 2625, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.

~~(3)~~

(4) 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 for a
13 felony or mandatory supervision and is incompetent as a result of
14 a mental disorder. Section 1370.01 shall apply to a person who is

1 charged with a misdemeanor or misdemeanors only, or a violation
2 of formal or informal probation for a misdemeanor, and the judge
3 finds reason to believe that the defendant is mentally disordered,
4 and may, as a result of the mental disorder, be incompetent to stand
5 trial. Section 1370.1 shall apply to a person who is incompetent
6 as a result of a developmental disability and shall apply to a person
7 who is incompetent as a result of a mental disorder, but is also
8 developmentally disabled. Section 1370.02 shall apply to a person
9 alleged to have violated the terms of his or her postrelease
10 community supervision or parole.

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

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

13 1368. (a) If, during the pendency of an action and prior to
14 judgment, or during revocation proceedings for a violation of
15 probation, mandatory supervision, postrelease community
16 supervision, or parole, a doubt arises in the mind of the judge as
17 to the mental competence of the defendant, he or she shall state
18 that doubt in the record and inquire of the attorney for the defendant
19 whether, in the opinion of the attorney, the defendant is mentally
20 competent. If the defendant is not represented by counsel, the court
21 shall appoint counsel. At the request of the defendant or his or her
22 counsel or upon its own motion, the court shall recess the
23 proceedings for as long as may be reasonably necessary to permit
24 counsel to confer with the defendant and to form an opinion as to
25 the mental competence of the defendant at that point in time.

26 (b) If counsel informs the court that he or she believes the
27 defendant is or may be mentally incompetent, the court shall order
28 that the question of the defendant's mental competence is to be
29 determined in a hearing which is held pursuant to Sections 1368.1
30 and 1369. If counsel informs the court that he or she believes the
31 defendant is mentally competent, the court may nevertheless order
32 a hearing. Any hearing shall be held in the superior court.

33 (c) Except as provided in Section 1368.1, when an order for a
34 hearing into the present mental competence of the defendant has
35 been issued, all proceedings in the criminal prosecution shall be
36 suspended until the question of the present mental competence of
37 the defendant has been determined.

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

1 If the defendant is declared mentally incompetent, the jury shall
2 be discharged.

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

4 1368.1. (a) If the action is on a complaint charging a felony,
5 proceedings to determine mental competence shall be held prior
6 to the filing of an information unless the counsel for the defendant
7 requests a preliminary examination under the provisions of Section
8 859b. At such preliminary examination, counsel for the defendant
9 may (1) demur, (2) move to dismiss the complaint on the ground
10 that there is not reasonable cause to believe that a felony has been
11 committed and that the defendant is guilty thereof, or (3) make a
12 motion under Section 1538.5.

13 (b) If the action is on a complaint charging a misdemeanor,
14 counsel for the defendant may (1) demur, (2) move to dismiss the
15 complaint on the ground that there is not reasonable cause to
16 believe that a public offense has been committed and that the
17 defendant is guilty thereof, or (3) make a motion under Section
18 1538.5.

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

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

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

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

33 1369. Except as stated in subdivision (g), a trial by court or
34 jury of the question of mental competence shall proceed in the
35 following order:

36 (a) The court shall appoint a psychiatrist or licensed
37 psychologist, and any other expert the court may deem appropriate,
38 to examine the defendant. In any case where the defendant or the
39 defendant's counsel informs the court that the defendant is not
40 seeking a finding of mental incompetence, the court shall appoint

1 two psychiatrists, licensed psychologists, or a combination thereof.
2 One of the psychiatrists or licensed psychologists may be named
3 by the defense and one may be named by the prosecution. The
4 examining psychiatrists or licensed psychologists shall evaluate
5 the nature of the defendant's mental disorder, if any, the
6 defendant's ability or inability to understand the nature of the
7 criminal proceedings or assist counsel in the conduct of a defense
8 in a rational manner as a result of a mental disorder and, if within
9 the scope of their licenses and appropriate to their opinions,
10 whether or not treatment with antipsychotic medication is medically
11 appropriate for the defendant and whether antipsychotic medication
12 is likely to restore the defendant to mental competence. If an
13 examining psychologist is of the opinion that antipsychotic
14 medication may be medically appropriate for the defendant and
15 that the defendant should be evaluated by a psychiatrist to
16 determine if antipsychotic medication is medically appropriate,
17 the psychologist shall inform the court of this opinion and his or
18 her recommendation as to whether a psychiatrist should examine
19 the defendant. The examining psychiatrists or licensed
20 psychologists shall also address the issues of whether the defendant
21 has capacity to make decisions regarding antipsychotic medication
22 and whether the defendant is a danger to self or others. If the
23 defendant is examined by a psychiatrist and the psychiatrist forms
24 an opinion as to whether or not treatment with antipsychotic
25 medication is medically appropriate, the psychiatrist shall inform
26 the court of his or her opinions as to the likely or potential side
27 effects of the medication, the expected efficacy of the medication,
28 possible alternative treatments, and whether it is medically
29 appropriate to administer antipsychotic medication in the county
30 jail. If it is suspected the defendant is developmentally disabled,
31 the court shall appoint the director of the regional center for the
32 developmentally disabled established under Division 4.5
33 (commencing with Section 4500) of the Welfare and Institutions
34 Code, or the designee of the director, to examine the defendant.
35 The court may order the developmentally disabled defendant to
36 be confined for examination in a residential facility or state
37 hospital.

38 The regional center director shall recommend to the court a
39 suitable residential facility or state hospital. Prior to issuing an
40 order pursuant to this section, the court shall consider the

1 recommendation of the regional center director. While the person
2 is confined pursuant to order of the court under this section, he or
3 she shall be provided with necessary care and treatment.

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

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

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

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

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

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

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

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

27 1369.1. (a) As used in this chapter, "treatment facility"
28 includes a county jail. Upon the concurrence of the county board
29 of supervisors, the county mental health director, and the county
30 sheriff, the jail may be designated to provide medically approved
31 medication to defendants found to be mentally incompetent and
32 unable to provide informed consent due to a mental disorder,
33 pursuant to this chapter. In the case of Madera, Napa, and Santa
34 Clara Counties, the concurrence shall be with the board of
35 supervisors, the county mental health director, and the county
36 sheriff or the chief of corrections. The provisions of Sections 1370,
37 1370.01, and 1370.02 shall apply to antipsychotic medications
38 provided in a county jail, provided, however, that the maximum
39 period of time a defendant may be treated in a treatment facility
40 pursuant to this section shall not exceed six months.

1 (b) This section does not abrogate or limit any law enacted to
2 ensure the due process rights set forth in *Sell v. United States*
3 (2003) 539 U.S. 166.

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

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

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

12 ~~(B) If the defendant is found mentally incompetent, the trial,~~
13 ~~the hearing on the alleged violation, or the judgment shall be~~
14 ~~suspended until the person becomes mentally competent.~~

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

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

39 ~~(iii) If the action against the defendant who has been found~~
40 ~~mentally incompetent is on a complaint charging a felony offense~~

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

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

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

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

25 (E) For purposes of this paragraph, "violent felony" means an
26 offense specified in subdivision (e) of Section 667.5.

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

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

39 (A) The court shall order the community program director or a
40 designee to evaluate the defendant and to submit to the court within

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

19 ~~(B) The court shall hear and determine whether the defendant~~
20 ~~lacks capacity to make decisions regarding the administration of~~
21 ~~antipsychotic medication, and shall proceed as follows:~~

22 ~~(i) The court shall hear and determine whether any of the~~
23 ~~following is true:~~

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

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

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

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

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

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

37 (iv) ~~If the court has determined that the defendant has the~~
38 ~~capacity to make decisions regarding antipsychotic medication,~~
39 ~~and if the defendant, with advice of his or her counsel, consents,~~
40 ~~the court order of commitment shall include confirmation that~~

1 antipsychotic medication may be given to the defendant as
2 prescribed by a treating psychiatrist pursuant to the defendant's
3 consent. The commitment order shall also indicate that, if the
4 defendant withdraws consent for antipsychotic medication, after
5 the treating psychiatrist complies with the provisions of
6 subparagraph (C), the defendant shall be returned to court for a
7 hearing in accordance with subparagraphs (C) and (D) regarding
8 whether antipsychotic medication shall be administered
9 involuntarily.

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

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

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

1 consent is not obtained from the defendant, and the treating
2 psychiatrist is of the opinion that the defendant lacks capacity to
3 make decisions regarding antipsychotic medication based on the
4 conditions described in subclause (I) or (II) of clause (i) of
5 subparagraph (B), the treating psychiatrist shall certify whether
6 the lack of capacity and any applicable conditions described above
7 exist. That certification shall contain an assessment of the current
8 mental status of the defendant and the opinion of the treating
9 psychiatrist that involuntary antipsychotic medication has become
10 medically necessary and appropriate.

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

- 33 (I) To be given timely access to the defendant's records.
- 34 (II) To be present at the hearing, unless the defendant waives
35 that right.
- 36 (III) To present evidence at the hearing.
- 37 (IV) To question persons presenting evidence supporting
38 involuntary medication.
- 39 (V) To make reasonable requests for attendance of witnesses
40 on the defendant's behalf.

1 ~~(VI) To a hearing conducted in an impartial and informal~~
2 ~~manner.~~

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

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

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

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

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

33 ~~(3) When the court orders that the defendant be confined in a~~
34 ~~state hospital or other public or private treatment facility, the court~~
35 ~~shall provide copies of the following documents which shall be~~
36 ~~taken with the defendant to the state hospital or other treatment~~
37 ~~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 (e).~~
- 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 community program director's placement~~
12 ~~recommendation report.~~
- 13 ~~(H) Records of any finding of mental incompetence pursuant~~
14 ~~to this chapter arising out of a complaint charging a felony offense~~
15 ~~specified in Section 290 or any pending Section 1368 proceeding~~
16 ~~arising out of a charge of a Section 290 offense.~~
- 17 ~~(4) When the defendant is committed to a treatment facility~~
18 ~~pursuant to clause (i) of subparagraph (B) of paragraph (1) or the~~
19 ~~court makes the findings specified in clause (ii) or (iii) of~~
20 ~~subparagraph (B) of paragraph (1) to assign the defendant to a~~
21 ~~treatment facility other than a state hospital or other secure~~
22 ~~treatment facility, the court shall order that notice be given to the~~
23 ~~appropriate law enforcement agency or agencies having local~~
24 ~~jurisdiction at the site of the placement facility of any finding of~~
25 ~~mental incompetence pursuant to this chapter arising out of a~~
26 ~~charge of a Section 290 offense.~~
- 27 ~~(5) When directing that the defendant be confined in a state~~
28 ~~hospital pursuant to this subdivision, the court shall select the~~
29 ~~hospital in accordance with the policies established by the State~~
30 ~~Department of State Hospitals.~~
- 31 ~~(6) (A) If the defendant is committed or transferred to a state~~
32 ~~hospital pursuant to this section, the court may, upon receiving the~~
33 ~~written recommendation of the medical director of the state hospital~~
34 ~~and the community program director that the defendant be~~
35 ~~transferred to a public or private treatment facility approved by~~
36 ~~the community program director, order the defendant transferred~~
37 ~~to that facility. If the defendant is committed or transferred to a~~
38 ~~public or private treatment facility approved by the community~~
39 ~~program director, the court may, upon receiving the written~~
40 ~~recommendation of the community program director, transfer the~~

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

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

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

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

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

- 1 ~~(A) Whether or not the defendant has the capacity to make~~
2 ~~decisions concerning antipsychotic medication.~~
- 3 ~~(B) If the defendant lacks capacity to make decisions concerning~~
4 ~~antipsychotic medication, whether the defendant risks serious harm~~
5 ~~to his or her physical or mental health if not treated with~~
6 ~~antipsychotic medication.~~
- 7 ~~(C) Whether or not the defendant presents a danger to others if~~
8 ~~he or she is not treated with antipsychotic medication.~~
- 9 ~~(D) Whether the defendant has a mental illness for which~~
10 ~~medications are the only effective treatment.~~
- 11 ~~(E) Whether there are any side effects from the medication~~
12 ~~currently being experienced by the defendant that would interfere~~
13 ~~with the defendant's ability to collaborate with counsel.~~
- 14 ~~(F) Whether there are any effective alternatives to medication.~~
- 15 ~~(G) How quickly the medication is likely to bring the defendant~~
16 ~~to competency.~~
- 17 ~~(H) Whether the treatment plan includes methods other than~~
18 ~~medication to restore the defendant to competency.~~
- 19 ~~(I) A statement, if applicable, that no medication is likely to~~
20 ~~restore the defendant to competency.~~
- 21 ~~(3) After reviewing the reports, the court shall determine whether~~
22 ~~or not grounds for the order authorizing involuntary administration~~
23 ~~of antipsychotic medication still exist and shall do one of the~~
24 ~~following:~~
- 25 ~~(A) If the original grounds for involuntary medication still exist,~~
26 ~~the order authorizing the treating facility to involuntarily administer~~
27 ~~antipsychotic medication to the defendant shall remain in effect.~~
- 28 ~~(B) If the original grounds for involuntary medication no longer~~
29 ~~exist, and there is no other basis for involuntary administration of~~
30 ~~antipsychotic medication, the order for the involuntary~~
31 ~~administration of antipsychotic medication shall be vacated.~~
- 32 ~~(C) If the original grounds for involuntary medication no longer~~
33 ~~exist, and the report states that there is another basis for involuntary~~
34 ~~administration of antipsychotic medication, the court shall set a~~
35 ~~hearing within 21 days to determine whether the order for the~~
36 ~~involuntary administration of antipsychotic medication shall be~~
37 ~~vacated or whether a new order for the involuntary administration~~
38 ~~of antipsychotic medication shall be issued. The hearing shall~~
39 ~~proceed as set forth in subparagraph (B) of paragraph (2) of~~
40 ~~subdivision (a).~~

1 ~~(4) Any 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 ~~community program director or a designee.~~

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

12 ~~(6) At each review by the court specified in this subdivision,~~
13 ~~the court shall determine if the security level of housing and~~
14 ~~treatment is appropriate and may make an order in accordance~~
15 ~~with its determination. If the court determines that the defendant~~
16 ~~shall continue to be treated in the state hospital or on an outpatient~~
17 ~~basis, the court shall determine issues concerning administration~~
18 ~~of antipsychotic medication, as set forth in subparagraph (B) of~~
19 ~~paragraph (2) of subdivision (a).~~

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

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

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

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

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

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

35 (e) If the criminal action against the defendant is dismissed, the
36 defendant shall be released from any commitment ordered under
37 this section, but without prejudice to the initiation of any
38 proceedings that may be appropriate under the
39 Lanterman-Petris-Short Act (Part 1 (commencing with Section
40 5000) of Division 5 of the Welfare and Institutions Code).

1 (f) ~~As used in this chapter, “community program director” means~~
2 ~~the person, agency, or entity designated by the State Department~~
3 ~~of State Hospitals pursuant to Section 1605 of this code and Section~~
4 ~~4360 of the Welfare and Institutions Code.~~

5 (g) ~~For the purpose of this section, “secure treatment facility”~~
6 ~~shall not include, except for state mental hospitals, state~~
7 ~~developmental centers, and correctional treatment facilities, any~~
8 ~~facility licensed pursuant to Chapter 2 (commencing with Section~~
9 ~~1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter~~
10 ~~3.2 (commencing with Section 1569) of, Division 2 of the Health~~
11 ~~and Safety Code, or any community board and care facility.~~

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

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

18 1370. (a) (1) (A) If the defendant is found mentally
19 competent, the criminal process shall resume, the trial on the
20 offense charged *or hearing on the alleged violation* shall proceed,
21 and judgment may be pronounced.

22 (B) If the defendant is found mentally incompetent, ~~the trial or~~
23 ~~trial, the hearing on the alleged violation, or the judgment~~ shall
24 be suspended until the person becomes mentally competent.

25 (i) In the meantime, the court shall order that the mentally
26 incompetent defendant be delivered by the sheriff to a state hospital
27 for the care and treatment of the mentally disordered, as directed
28 by the State Department of State Hospitals, or to any other available
29 public or private treatment facility, including a local county jail
30 treatment facility or the community-based residential treatment
31 system established pursuant to Article 1 (commencing with Section
32 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
33 Institutions Code if the facility has a secured perimeter or a locked
34 and controlled treatment facility, approved by the community
35 program director that will promote the defendant’s speedy
36 restoration to mental competence, or placed on outpatient status
37 as specified in Section 1600.

38 (ii) However, if the action against the defendant who has been
39 found mentally incompetent is on a complaint charging a felony
40 offense specified in Section 290, the prosecutor shall determine

1 whether the defendant previously has been found mentally
2 incompetent to stand trial pursuant to this chapter on a charge of
3 a Section 290 offense, or whether the defendant is currently the
4 subject of a pending Section 1368 proceeding arising out of a
5 charge of a Section 290 offense. If either determination is made,
6 the prosecutor shall so notify the court and defendant in writing.
7 After this notification, and opportunity for hearing, the court shall
8 order that the defendant be delivered by the sheriff to a state
9 hospital, as directed by the State Department of State Hospitals,
10 or other secure treatment facility for the care and treatment of the
11 mentally disordered unless the court makes specific findings on
12 the record that an alternative placement would provide more
13 appropriate treatment for the defendant and would not pose a
14 danger to the health and safety of others.

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

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

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

37 (D) A defendant charged with a violent felony may not be
38 delivered to a state hospital or treatment facility pursuant to this
39 subdivision unless the state hospital or treatment facility has a

1 secured perimeter or a locked and controlled treatment facility,
2 and the judge determines that the public safety will be protected.

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

5 (F) A defendant charged with a violent felony may be placed
6 on outpatient status, as specified in Section 1600, only if the court
7 finds that the placement will not pose a danger to the health or
8 safety of others. If the court places a defendant charged with a
9 violent felony on outpatient status, as specified in Section 1600,
10 the court ~~must~~ shall serve copies of the placement order on defense
11 counsel, the sheriff in the county where the defendant will be
12 ~~placed~~ placed, and the district attorney for the county in which the
13 violent felony charges are pending against the defendant.

14 (2) Prior to making the order directing that the defendant be
15 committed to the State Department of State Hospitals or other
16 treatment facility or placed on outpatient status, the court shall
17 proceed as follows:

18 (A) The court shall order the community program director or a
19 designee to evaluate the defendant and to submit to the court within
20 15 judicial days of the order a written recommendation as to
21 whether the defendant should be required to undergo outpatient
22 treatment, or *be* committed to the State Department of State
23 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
24 be admitted to a state hospital or other treatment facility or placed
25 on outpatient status under this section without having been
26 evaluated by the community program director or a designee. The
27 community program director or designee shall evaluate the
28 appropriate placement for the defendant between the State
29 Department of State Hospitals, a local county jail treatment facility,
30 or the community-based residential treatment system based upon
31 guidelines provided by the State Department of State Hospitals.
32 If a local county jail treatment facility is selected, the State
33 Department of State Hospitals shall provide treatment at the county
34 jail treatment facility and reimburse the county jail treatment
35 facility for the reasonable costs of the bed during the treatment. If
36 the community-based residential treatment system is selected, the
37 State Department of State Hospitals shall provide reimbursement
38 to the community-based residential treatment system for the cost
39 of treatment as negotiated with the State Department of State
40 Hospitals. The six-month limitation in Section 1369.1 shall not

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (C) If the defendant consented to antipsychotic medication as
19 described in clause (iv) of subparagraph (B), but subsequently
20 withdraws his or her consent, or, if involuntary antipsychotic
21 medication was not ordered pursuant to clause (v) of subparagraph
22 (B), and the treating psychiatrist determines that antipsychotic
23 medication has become medically necessary and appropriate, the
24 treating psychiatrist shall make efforts to obtain informed consent
25 from the defendant for antipsychotic medication. If informed
26 consent is not obtained from the defendant, and the treating
27 psychiatrist is of the opinion that the defendant lacks capacity to
28 make decisions regarding antipsychotic medication based on the
29 conditions described in subclause (I) or (II) of clause (i) of
30 subparagraph (B), the treating psychiatrist shall certify whether
31 the lack of capacity and any applicable conditions described above
32 exist. That certification shall contain an assessment of the current
33 mental status of the defendant and the opinion of the treating
34 psychiatrist that involuntary antipsychotic medication has become
35 medically necessary and appropriate.

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

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

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

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

21 (III) To present evidence at the hearing.

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

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

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

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

- 1 (iii) If the administrative law judge disagrees with the
2 certification, medication may not be administered involuntarily
3 until the court determines that antipsychotic medication should be
4 administered pursuant to this section.
- 5 (iv) The court shall provide notice to the prosecuting attorney
6 and to the attorney representing the defendant, and shall hold a
7 hearing, no later than 18 days from the date of the certification, to
8 determine whether antipsychotic medication should be ordered
9 beyond the certification period.
- 10 (v) If, as a result of the hearing, the court determines that
11 antipsychotic medication should be administered beyond the
12 certification period, the court shall issue an order authorizing the
13 administration of that medication.
- 14 (vi) The court shall render its decision on the petition and issue
15 its order no later than three calendar days after the hearing and, in
16 any event, no later than the expiration of the 21-day certification
17 period.
- 18 (3) When the court orders that the defendant be committed to
19 the State Department of State Hospitals or other public or private
20 treatment facility, the court shall provide copies of the following
21 documents prior to the admission of the defendant to the State
22 Department of State Hospitals or other treatment facility where
23 the defendant is to be committed:
 - 24 (A) The commitment order, including a specification of the
25 charges.
 - 26 (B) A computation or statement setting forth the maximum term
27 of commitment in accordance with subdivision (c).
 - 28 (C) A computation or statement setting forth the amount of
29 credit for time served, if any, to be deducted from the maximum
30 term of commitment.
 - 31 (D) State summary criminal history information.
 - 32 (E) Any arrest reports prepared by the police department or
33 other law enforcement agency.
 - 34 (F) Any court-ordered psychiatric examination or evaluation
35 reports.
 - 36 (G) The community program director's placement
37 recommendation report.
 - 38 (H) Records of any finding of mental incompetence pursuant
39 to this chapter arising out of a complaint charging a felony offense

1 specified in Section 290 or any pending Section 1368 proceeding
2 arising out of a charge of a Section 290 offense.

3 (I) Any medical records.

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

14 (5) When directing that the defendant be confined in a state
15 hospital pursuant to this subdivision, the court shall commit the
16 patient to the State Department of State Hospitals.

17 (6) (A) If the defendant is committed or transferred to the State
18 Department of State Hospitals pursuant to this section, the court
19 may, upon receiving the written recommendation of the medical
20 director of the state hospital and the community program director
21 that the defendant be transferred to a public or private treatment
22 facility approved by the community program director, order the
23 defendant transferred to that facility. If the defendant is committed
24 or transferred to a public or private treatment facility approved by
25 the community program director, the court may, upon receiving
26 the written recommendation of the community program director,
27 transfer the defendant to the State Department of State Hospitals
28 or to another public or private treatment facility approved by the
29 community program director. In the event of dismissal of the
30 criminal charges before the defendant recovers competence, the
31 person shall be subject to the applicable provisions of the
32 Lanterman-Petris-Short Act (Part 1 (commencing with Section
33 5000) of Division 5 of the Welfare and Institutions Code). If either
34 the defendant or the prosecutor chooses to contest either kind of
35 order of transfer, a petition may be filed in 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 are 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 community program director or
4 a designee.

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

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

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

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

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

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

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

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

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

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

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

39 (G) How quickly the medication is likely to bring the defendant
40 to competency.

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

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

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

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

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

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

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

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

36 (6) At each review by the court specified in this subdivision,
37 the court shall determine if the security level of housing and
38 treatment is appropriate and may make an order in accordance
39 with its determination. If the court determines that the defendant
40 shall continue to be treated in the state hospital or on an outpatient

1 basis, the court shall determine issues concerning administration
2 of antipsychotic medication, as set forth in subparagraph (B) of
3 paragraph (2) of subdivision (a).

4 (c) (1) At the end of three years from the date of commitment
5 or a period of commitment equal to the maximum term of
6 imprisonment provided by law for the most serious offense charged
7 in the information, indictment, or misdemeanor complaint, *or the*
8 *maximum term of imprisonment provided by law for a violation*
9 *of probation or mandatory supervision*, whichever is shorter, a
10 defendant who has not recovered mental competence shall be
11 returned to the committing court. The court shall notify the
12 community program director or a designee of the return and of
13 any resulting court orders.

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

34 (3) If a change in placement is proposed for a defendant who
35 is committed pursuant to subparagraph (B) of paragraph (1) of
36 subdivision (h) of Section 5008 of the Welfare and Institutions
37 Code, the court shall provide notice and an opportunity to be heard
38 with respect to the proposed placement of the defendant to the
39 sheriff and the district attorney of the county in which *the* criminal
40 charges *or revocation proceedings* are pending.

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

6 (d) ~~The~~ *With the exception of proceedings alleging a violation*
7 *of mandatory supervision, the criminal action remains subject to*
8 *dismissal pursuant to Section 1385. If the criminal action is*
9 *dismissed, the court shall transmit a copy of the order of dismissal*
10 *to the community program director or a designee. In a proceeding*
11 *alleging a violation of mandatory supervision, if the person is not*
12 *placed under a conservatorship as described in paragraph (2) of*
13 *subdivision (c), or if a conservatorship is terminated, the court*
14 *shall reinstate mandatory supervision and may modify the terms*
15 *and conditions of supervision to include appropriate mental health*
16 *treatment or refer the matter to a local mental health court, reentry*
17 *court, or other collaborative justice court available for improving*
18 *the mental health of the defendant.*

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

26 (f) As used in this chapter, "community program director" means
27 the person, agency, or entity designated by the State Department
28 of State Hospitals pursuant to Section 1605 of this code and Section
29 4360 of the Welfare and Institutions Code.

30 (g) For the purpose of this section, "secure treatment facility"
31 shall not include, except for state mental hospitals, state
32 developmental centers, and correctional treatment facilities, any
33 facility licensed pursuant to Chapter 2 (commencing with Section
34 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
35 3.2 (commencing with Section 1569) of, Division 2 of the Health
36 and Safety Code, or any community board and care facility.

37 (h) Nothing in this section shall preclude a defendant from filing
38 a petition for habeas corpus to challenge the continuing validity
39 of an order authorizing a treatment facility or outpatient program

1 to involuntarily administer antipsychotic medication to a person
2 being treated as incompetent to stand trial.

3 *SEC. 7.1. Section 1370 of the Penal Code is amended to read:*

4 1370. (a) (1) (A) If the defendant is found mentally
5 competent, the criminal process shall resume, the trial on the
6 offense charged *or hearing on the alleged violation* shall proceed,
7 and judgment may be pronounced.

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

11 (i) In the meantime, the court shall order that the mentally
12 incompetent defendant be delivered by the sheriff to a state hospital
13 for the care and treatment of the mentally disordered, as directed
14 by the State Department of State Hospitals, or to any other available
15 public or private treatment facility, including a local county jail
16 treatment facility or the community-based residential treatment
17 system established pursuant to Article 1 (commencing with Section
18 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
19 Institutions Code if the facility has a secured perimeter or a locked
20 and controlled treatment facility, approved by the community
21 program director that will promote the defendant's speedy
22 restoration to mental competence, or placed on outpatient status
23 as specified in Section 1600.

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

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

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

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

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

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

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

39 (2) Prior to making the order directing that the defendant be
40 committed to the State Department of State Hospitals or other

1 treatment facility or placed on outpatient status, the court shall
2 proceed as follows:

3 (A) The court shall order the community program director or a
4 designee to evaluate the defendant and to submit to the court within
5 15 judicial days of the order a written recommendation as to
6 whether the defendant should be required to undergo outpatient
7 treatment, or *be* committed to the State Department of State
8 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
9 be admitted to a state hospital or other treatment facility or placed
10 on outpatient status under this section without having been
11 evaluated by the community program director or a designee. The
12 community program director or designee shall evaluate the
13 appropriate placement for the defendant between the State
14 Department of State Hospitals, a local county jail treatment facility,
15 or the community-based residential treatment system based upon
16 guidelines provided by the State Department of State Hospitals.
17 If a local county jail treatment facility is selected, the State
18 Department of State Hospitals shall provide treatment at the county
19 jail treatment facility and reimburse the county jail treatment
20 facility for the reasonable costs of the bed during the treatment. If
21 the community-based residential treatment system is selected, the
22 State Department of State Hospitals shall provide reimbursement
23 to the community-based residential treatment system for the cost
24 of treatment as negotiated with the State Department of State
25 Hospitals. The six-month limitation in Section 1369.1 shall not
26 apply to individuals deemed incompetent to stand trial who are
27 being treated to restore competency within a county jail treatment
28 facility pursuant to this section.

29 (B) The court shall hear and determine whether the *defendant*
30 *lacks capacity to make decisions regarding the administration of*
31 *antipsychotic medication. The court shall consider opinions in the*
32 *reports prepared pursuant to subdivision (a) of Section 1369, as*
33 *applicable to the issue of whether the defendant lacks capacity to*
34 *make decisions regarding the administration of antipsychotic*
35 *medication, and shall proceed as follows:*

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

38 (I) The defendant lacks capacity to make decisions regarding
39 antipsychotic medication, the defendant's mental disorder requires
40 medical treatment with antipsychotic medication, and, if the

1 defendant's mental disorder is not treated with antipsychotic
2 medication, it is probable that serious harm to the physical or
3 mental health of the patient will result. Probability of serious harm
4 to the physical or mental health of the defendant requires evidence
5 that the defendant is presently suffering adverse effects to his or
6 her physical or mental health, or the defendant has previously
7 suffered these effects as a result of a mental disorder and his or
8 her condition is substantially deteriorating. The fact that a
9 defendant has a diagnosis of a mental disorder does not alone
10 establish probability of serious harm to the physical or mental
11 health of the defendant.

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

26 (III) The people have charged the defendant with a serious crime
27 against the person or property, involuntary administration of
28 antipsychotic medication is substantially likely to render the
29 defendant competent to stand trial, the medication is unlikely to
30 have side effects that interfere with the defendant's ability to
31 understand the nature of the criminal proceedings or to assist
32 counsel in the conduct of a defense in a reasonable manner, less
33 intrusive treatments are unlikely to have substantially the same
34 results, and antipsychotic medication is in the patient's best medical
35 interest in light of his or her medical condition.

36 (ii) If the court finds any of the conditions described in clause
37 (i) to be true, the court shall issue an order authorizing ~~the treatment~~
38 ~~facility to involuntarily administer~~ *involuntary administration of*
39 antipsychotic medication to the defendant when and as prescribed
40 by the defendant's treating ~~psychiatrist.~~ *psychiatrist at any facility*

1 *housing the defendant for purposes of this chapter. The order shall*
2 *be valid for no more than one year, pursuant to subparagraph (A)*
3 *of paragraph (7). The court shall not order involuntary*
4 *administration of psychotropic medication under subclause (III)*
5 *of clause (i) unless the court has first found that the defendant does*
6 *not meet the criteria for involuntary administration of psychotropic*
7 *medication under subclause (I) of clause (i) and does not meet the*
8 *criteria under subclause (II) of clause (i).*

9 (iii) In all cases, the treating hospital, facility, or program may
10 administer medically appropriate antipsychotic medication
11 prescribed by a psychiatrist in an emergency as described in
12 subdivision (m) of Section 5008 of the Welfare and Institutions
13 Code.

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

27 (v) If the court has determined that the defendant has the
28 capacity to make decisions regarding antipsychotic medication
29 and if the defendant, with advice from his or her counsel, does not
30 consent, the court order for commitment shall indicate that, after
31 the treating psychiatrist complies with the provisions of
32 subparagraph (C), the defendant shall be returned to court for a
33 hearing in accordance with subparagraphs (C) and (D) regarding
34 whether antipsychotic medication shall be administered
35 involuntarily.

36 (vi) Any report made pursuant to paragraph (1) of subdivision
37 (b) shall include a description of any antipsychotic medication
38 administered to the defendant and its effects and side effects,
39 including effects on the defendant's appearance or behavior that
40 would affect the defendant's ability to understand the nature of

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

10 (C) If the defendant consented to antipsychotic medication as
11 described in clause (iv) of subparagraph (B), but subsequently
12 withdraws his or her consent, or, if involuntary antipsychotic
13 medication was not ordered pursuant to clause (v) 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 based on the
21 conditions described in subclause (I) or (II) of clause (i) of
22 subparagraph (B), the treating psychiatrist shall certify whether
23 the lack of capacity and any applicable conditions described above
24 exist. That certification shall contain an assessment of the current
25 mental status of the defendant and the opinion of the treating
26 psychiatrist that involuntary antipsychotic medication has become
27 medically necessary and appropriate.

28 (D) (i) If the treating psychiatrist certifies that antipsychotic
29 medication has become medically necessary and appropriate
30 pursuant to subparagraph (C), antipsychotic medication may be
31 administered to the defendant for not more than 21 days, provided,
32 however, that, within 72 hours of the certification, the defendant
33 is provided a medication review hearing before an administrative
34 law judge to be conducted at the facility where the defendant is
35 receiving treatment. The treating psychiatrist shall present the case
36 for the certification for involuntary treatment and the defendant
37 shall be represented by an attorney or a patients' rights advocate.
38 The attorney or patients' rights advocate shall be appointed to meet
39 with the defendant no later than one day prior to the medication
40 review hearing to review the defendant's rights at the medication

1 review hearing, discuss the process, answer questions or concerns
2 regarding involuntary medication or the hearing, assist the
3 defendant in preparing for the hearing and advocating for his or
4 her interests at the hearing, review the panel’s final determination
5 following the hearing, advise the defendant of his or her right to
6 judicial review of the panel’s decision, and provide the defendant
7 with referral information for legal advice on the subject. The
8 defendant shall also have the following rights with respect to the
9 medication review hearing:

10 (I) ~~To being~~ *be* given timely access to the defendant’s records.

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

13 (III) To present evidence at the hearing.

14 (IV) To question persons presenting evidence supporting
15 involuntary medication.

16 (V) To make reasonable requests for attendance of witnesses
17 on the defendant’s behalf.

18 (VI) To a hearing conducted in an impartial and informal
19 manner.

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

33 (iii) If the administrative law judge disagrees with the
34 certification, medication may not be administered involuntarily
35 until the court determines that antipsychotic medication should be
36 administered pursuant to this section.

37 (iv) The court shall provide notice to the prosecuting attorney
38 and to the attorney representing the defendant, and shall hold a
39 hearing, no later than 18 days from the date of the certification, to

1 determine whether antipsychotic medication should be ordered
2 beyond the certification period.

3 (v) If, as a result of the hearing, the court determines that
4 antipsychotic medication should be administered beyond the
5 certification period, the court shall issue an order authorizing the
6 administration of that medication.

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

11 (vii) *If the administrative law judge upholds the certification*
12 *pursuant to clause (ii), the court may, for a period not to exceed*
13 *14 days, extend the certification and continue the hearing pursuant*
14 *to stipulation between the parties or upon a finding of good cause.*
15 *In determining good cause, the court may review the petition filed*
16 *with the court, the administrative law judge's order, and any*
17 *additional testimony needed by the court to determine if it is*
18 *appropriate to continue medication beyond the 21-day certification*
19 *and for a period of up to 14 days.*

20 (viii) *The district attorney, county counsel, or representative of*
21 *any facility where a defendant found incompetent to stand trial is*
22 *committed may petition the court for an order to administer*
23 *involuntary medication pursuant to the criteria set forth in*
24 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
25 *order is reviewable as provided in paragraph (7).*

26 (3) When the court orders that the defendant be committed to
27 the State Department of State Hospitals or other public or private
28 treatment facility, the court shall provide copies of the following
29 documents prior to the admission of the defendant to the State
30 Department of State Hospitals or other treatment facility where
31 the defendant is to be committed:

32 (A) The commitment order, including a specification of the
33 charges.

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

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

39 (D) State summary criminal history information.

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

3 (F) Any court-ordered psychiatric examination or evaluation
4 reports.

5 (G) The community program director's placement
6 recommendation report.

7 (H) Records of any finding of mental incompetence pursuant
8 to this chapter arising out of a complaint charging a felony offense
9 specified in Section 290 or any pending Section 1368 proceeding
10 arising out of a charge of a Section 290 offense.

11 (I) Any medical records.

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

22 (5) When directing that the defendant be confined in a state
23 hospital pursuant to this subdivision, the court shall commit the
24 patient to the State Department of State Hospitals.

25 (6) (A) If the defendant is committed or transferred to the State
26 Department of State Hospitals pursuant to this section, the court
27 may, upon receiving the written recommendation of the medical
28 director of the state hospital and the community program director
29 that the defendant be transferred to a public or private treatment
30 facility approved by the community program director, order the
31 defendant transferred to that facility. If the defendant is committed
32 or transferred to a public or private treatment facility approved by
33 the community program director, the court may, upon receiving
34 the written recommendation of the community program director,
35 transfer the defendant to the State Department of State Hospitals
36 or to another public or private treatment facility approved by the
37 community program director. In the event of dismissal of the
38 criminal charges before the defendant recovers competence, the
39 person shall be subject to the applicable provisions of the
40 Lanterman-Petris-Short Act (Part 1 (commencing with Section

1 5000) of Division 5 of the Welfare and Institutions Code). If either
2 the defendant or the prosecutor chooses to contest either kind of
3 order of transfer, a petition may be filed in the court for a hearing,
4 which shall be held if the court determines that sufficient grounds
5 exist. At the hearing, the prosecuting attorney or the defendant
6 may present evidence bearing on the order of transfer. The court
7 shall use the same standards as are used in conducting probation
8 revocation hearings pursuant to Section 1203.2.

9 Prior to making an order for transfer under this section, the court
10 shall notify the defendant, the attorney of record for the defendant,
11 the prosecuting attorney, and the community program director or
12 a designee.

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

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

34 (B) *Within 60 days before the expiration of the one-year*
35 *involuntary medication order, the district attorney, county counsel,*
36 *or representative of any facility where a defendant found*
37 *incompetent to stand trial is committed may petition the committing*
38 *court for a renewal, subject to the same conditions and*
39 *requirements as in subparagraph (A). The petition shall include*
40 *the basis for involuntary medication set forth in clause (i) of*

1 *subparagraph (B) of paragraph (2). Notice of the petition shall*
2 *be provided to the defendant, the defendant's attorney, and the*
3 *district attorney. The court shall hear and determine whether the*
4 *defendant continues to meet the criteria set forth in clause (i) of*
5 *subparagraph (B) of paragraph (2). The hearing on any petition*
6 *to renew an order for involuntary medication shall be conducted*
7 *prior to the expiration of the current order.*

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

1 court for proceedings pursuant to paragraph (2) of subdivision (c).
2 The court shall transmit a copy of its order to the community
3 program director or a designee.

4 (2) If the court has issued an order authorizing the treating
5 facility to involuntarily administer antipsychotic medication to the
6 defendant, the reports made ~~at six-month intervals~~ pursuant to
7 *paragraph (1)* concerning the defendant's progress toward
8 regaining competency shall also consider the issue of involuntary
9 medication. Each report shall include, but is not limited to, all the
10 following:

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

13 (B) If the defendant lacks capacity to make decisions concerning
14 antipsychotic medication, whether the defendant risks serious harm
15 to his or her physical or mental health if not treated with
16 antipsychotic medication.

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

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

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

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

25 (G) How quickly the medication is likely to bring the defendant
26 to competency.

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

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

31 (3) After reviewing the reports, the court shall determine whether
32 or not grounds for the order authorizing involuntary administration
33 of antipsychotic medication still exist and shall do one of the
34 following:

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

38 (B) If the original grounds for involuntary medication no longer
39 exist, and there is no other basis for involuntary administration of

1 antipsychotic medication, the order for the involuntary
2 administration of antipsychotic medication shall be vacated.

3 (C) If the original grounds for involuntary medication no longer
4 exist, and the report states that there is another basis for involuntary
5 administration of antipsychotic medication, the court shall set a
6 hearing within 21 days to determine whether the order for the
7 involuntary administration of antipsychotic medication shall be
8 vacated or whether a new order for the involuntary administration
9 of antipsychotic medication shall be issued. The hearing shall
10 proceed as set forth in subparagraph (B) of paragraph (2) of
11 subdivision (a).

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

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

23 (6) At each review by the court specified in this subdivision,
24 the court shall determine if the security level of housing and
25 treatment is appropriate and may make an order in accordance
26 with its determination. If the court determines that the defendant
27 shall continue to be treated in the state hospital or on an outpatient
28 basis, the court shall determine issues concerning administration
29 of antipsychotic medication, as set forth in subparagraph (B) of
30 paragraph (2) of subdivision (a).

31 (c) (1) At the end of three years from the date of commitment
32 or a period of commitment equal to the maximum term of
33 imprisonment provided by law for the most serious offense charged
34 in the information, indictment, or misdemeanor complaint, *or the*
35 *maximum term of imprisonment provided by law for a violation*
36 *of probation or mandatory supervision*, whichever is shorter, a
37 defendant who has not recovered mental competence shall be
38 returned to the committing court. The court shall notify the
39 community program director or a designee of the return and of
40 any resulting court orders.

1 (2) Whenever any defendant is returned to the court pursuant
2 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
3 subdivision and it appears to the court that the defendant is gravely
4 disabled, as defined in subparagraph (B) of paragraph (1) of
5 subdivision (h) of Section 5008 of the Welfare and Institutions
6 Code, the court shall order the conservatorship investigator of the
7 county of commitment of the defendant to initiate conservatorship
8 proceedings for the defendant pursuant to Chapter 3 (commencing
9 with Section 5350) of Part 1 of Division 5 of the Welfare and
10 Institutions Code. Any hearings required in the conservatorship
11 proceedings shall be held in the superior court in the county that
12 ordered the commitment. The court shall transmit a copy of the
13 order directing initiation of conservatorship proceedings to the
14 community program director or a designee, the sheriff and the
15 district attorney of the county in which criminal charges are
16 pending, and the defendant's counsel of record. The court shall
17 notify the community program director or a designee, the sheriff
18 and district attorney of the county in which criminal charges are
19 pending, and the defendant's counsel of record of the outcome of
20 the conservatorship proceedings.

21 (3) If a change in placement is proposed for a defendant who
22 is committed pursuant to subparagraph (B) of paragraph (1) of
23 subdivision (h) of Section 5008 of the Welfare and Institutions
24 Code, the court shall provide notice and an opportunity to be heard
25 with respect to the proposed placement of the defendant to the
26 sheriff and the district attorney of the county in which *the* criminal
27 charges *or revocation proceedings* are pending.

28 (4) If the defendant is confined in a treatment facility, a copy
29 of any report to the committing court regarding the defendant's
30 progress toward recovery of mental competence shall be provided
31 by the committing court to the prosecutor and to the defense
32 counsel.

33 (d) ~~The~~ *With the exception of proceedings alleging a violation*
34 *of mandatory supervision, the* criminal action remains subject to
35 dismissal pursuant to Section 1385. If the criminal action is
36 dismissed, the court shall transmit a copy of the order of dismissal
37 to the community program director or a designee. *In a proceeding*
38 *alleging a violation of mandatory supervision, if the person is not*
39 *placed under a conservatorship as described in paragraph (2) of*
40 *subdivision (c), or if a conservatorship is terminated, the court*

1 *shall reinstate mandatory supervision and may modify the terms*
2 *and conditions of supervision to include appropriate mental health*
3 *treatment or refer the matter to a local mental health court, reentry*
4 *court, or other collaborative justice court available for improving*
5 *the mental health of the defendant.*

6 (e) If the criminal—~~charge~~ *action* against the defendant is
7 dismissed, the defendant shall be released from any commitment
8 ordered under this section, but without prejudice to the initiation
9 of any proceedings that may be appropriate under the
10 Lanterman-Petris-Short ~~Act, Part Act~~ (*Part 1* (commencing with
11 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~
12 *Code*).

13 (f) As used in this chapter, “community program director” means
14 the person, agency, or entity designated by the State Department
15 of State Hospitals pursuant to Section 1605 of this code and Section
16 4360 of the Welfare and Institutions Code.

17 (g) For the purpose of this section, “secure treatment facility”
18 shall not include, except for state mental hospitals, state
19 developmental centers, and correctional treatment facilities, any
20 facility licensed pursuant to Chapter 2 (commencing with Section
21 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
22 3.2 (commencing with Section 1569) of, Division 2 of the Health
23 and Safety Code, or any community board and care facility.

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

29 *SEC. 7.2. Section 1370 of the Penal Code is amended to read:*

30 1370. (a) (1) (A) If the defendant is found mentally
31 competent, the criminal process shall resume, the trial on the
32 offense charged *or hearing on the alleged violation* shall proceed,
33 and judgment may be pronounced.

34 (B) If the defendant is found mentally incompetent, ~~the trial or~~
35 *trial, the hearing on the alleged violation, or the judgment* shall
36 be suspended until the person becomes mentally competent.

37 (i) In the meantime, the court shall order that the mentally
38 incompetent defendant be delivered by the sheriff to a state hospital
39 for the care and treatment of the mentally disordered, as directed
40 by the State Department of State Hospitals, or to any other available

1 public or private treatment facility, including a local county jail
2 treatment facility or the community-based residential treatment
3 system established pursuant to Article 1 (commencing with Section
4 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
5 Institutions Code if the facility has a secured perimeter or a locked
6 and controlled treatment facility, approved by the community
7 program director that will promote the defendant's speedy
8 restoration to mental competence, or placed on outpatient status
9 as specified in Section 1600.

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

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

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

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

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

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

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

25 (2) Prior to making the order directing that the defendant be
26 committed to the State Department of State Hospitals or other
27 treatment facility or placed on outpatient status, the court shall
28 proceed as follows:

29 (A) The court shall order the community program director or a
30 designee to evaluate the defendant and to submit to the court within
31 15 judicial days of the order a written recommendation as to
32 whether the defendant should be required to undergo outpatient
33 treatment, or *be* committed to the State Department of State
34 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
35 be admitted to a state hospital or other treatment facility or placed
36 on outpatient status under this section without having been
37 evaluated by the community program director or a designee. The
38 community program director or designee shall evaluate the
39 appropriate placement for the defendant between the State
40 Department of State Hospitals, a local county jail treatment facility,

1 or the community-based residential treatment system based upon
2 guidelines provided by the State Department of State Hospitals.
3 If a local county jail treatment facility is selected, the State
4 Department of State Hospitals shall provide treatment at the county
5 jail treatment facility and reimburse the county jail treatment
6 facility for the reasonable costs of the bed during the treatment. If
7 the community-based residential treatment system is selected, the
8 State Department of State Hospitals shall provide reimbursement
9 to the community-based residential treatment system for the cost
10 of treatment as negotiated with the State Department of State
11 Hospitals. The six-month limitation in Section 1369.1 shall not
12 apply to individuals deemed incompetent to stand trial who are
13 being treated to restore competency within a county jail treatment
14 facility pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) When the court orders that the defendant be committed to
30 the State Department of State Hospitals or other public or private
31 treatment facility, the court shall provide copies of the following
32 documents prior to the admission of the defendant to the State
33 Department of State Hospitals or other treatment facility where
34 the defendant is to be committed:

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

37 (B) A computation or statement setting forth the maximum term
38 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 (I) Any medical records.

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

26 (5) When directing that the defendant be confined in a state
27 hospital pursuant to this subdivision, the court shall commit the
28 patient to the State Department of State Hospitals.

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

1 community program director. In the event of dismissal of the
2 criminal charges before the defendant recovers competence, the
3 person shall be subject to the applicable provisions of the
4 Lanterman-Petris-Short Act (Part 1 (commencing with Section
5 5000) of Division 5 of the Welfare and Institutions Code). If either
6 the defendant or the prosecutor chooses to contest either kind of
7 order of transfer, a petition may be filed in the court for a hearing,
8 which shall be held if the court determines that sufficient grounds
9 exist. At the hearing, the prosecuting attorney or the defendant
10 may present evidence bearing on the order of transfer. The court
11 shall use the same standards as are used in conducting probation
12 revocation hearings pursuant to 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 the State
18 Department of State Hospitals or secure treatment facility pursuant
19 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
20 subsequently transferred to any other facility, copies of the
21 documents specified in paragraph (3) shall be taken with the
22 defendant to each subsequent facility to which the defendant is
23 transferred. The transferring facility shall also notify the appropriate
24 law enforcement agency or agencies having local jurisdiction at
25 the site of the new facility that the defendant is a person subject
26 to clause (ii) or (iii) of subparagraph (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 If 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, if 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 If 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. ~~ff~~

25 (A) *If the report indicates that there is no substantial likelihood*
26 *that the defendant will regain mental competence in the foreseeable*
27 *future, the committing court shall order the defendant to be returned*
28 *to the court for proceedings pursuant to paragraph (2) of*
29 *subdivision (e). (c) no later than 10 days following receipt of the*
30 *report. The court shall transmit a copy of its order to the*
31 *community program director or a designee.*

32 (B) *If the report indicates that there is no substantial likelihood*
33 *that the defendant will regain mental competence in the foreseeable*
34 *future, the medical director of the state hospital or other treatment*
35 *facility to which the defendant is confined shall do both of the*
36 *following:*

37 (i) *Promptly notify and provide a copy of the report to the*
38 *defense counsel and the district attorney.*

1 (ii) *Provide a separate notification, in compliance with*
2 *applicable privacy laws, to the committing county's sheriff that*
3 *transportation will be needed for the patient.*

4 (2) If the court has issued an order authorizing the treating
5 facility to involuntarily administer antipsychotic medication to the
6 defendant, the reports made at six-month intervals concerning the
7 defendant's progress toward regaining competency shall also
8 consider the issue of involuntary medication. Each report shall
9 include, but is not limited to, all the following:

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

12 (B) If the defendant lacks capacity to make decisions concerning
13 antipsychotic medication, whether the defendant risks serious harm
14 to his or her physical or mental health if not treated with
15 antipsychotic medication.

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

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

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

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

24 (G) How quickly the medication is likely to bring the defendant
25 to competency.

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

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

30 (3) After reviewing the reports, the court shall determine whether
31 or not grounds for the order authorizing involuntary administration
32 of antipsychotic medication still exist and shall do one of the
33 following:

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

37 (B) If the original grounds for involuntary medication no longer
38 exist, and there is no other basis for involuntary administration of
39 antipsychotic medication, the order for the involuntary
40 administration of antipsychotic medication shall be vacated.

1 (C) If the original grounds for involuntary medication no longer
2 exist, and the report states that there is another basis for involuntary
3 administration of antipsychotic medication, the court shall set a
4 hearing within 21 days to determine whether the order for the
5 involuntary administration of antipsychotic medication shall be
6 vacated or whether a new order for the involuntary administration
7 of antipsychotic medication shall be issued. The hearing shall
8 proceed as set forth in subparagraph (B) of paragraph (2) of
9 subdivision (a).

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

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

21 (6) At each review by the court specified in this subdivision,
22 the court shall determine if the security level of housing and
23 treatment is appropriate and may make an order in accordance
24 with its determination. If the court determines that the defendant
25 shall continue to be treated in the state hospital or on an outpatient
26 basis, the court shall determine issues concerning administration
27 of antipsychotic medication, as set forth in subparagraph (B) of
28 paragraph (2) of subdivision (a).

29 (c) (1) At the end of three years from the date of commitment
30 or a period of commitment equal to the maximum term of
31 imprisonment provided by law for the most serious offense charged
32 in the information, indictment, or misdemeanor complaint, *or the*
33 *maximum term of imprisonment provided by law for a violation*
34 *of probation or mandatory supervision, whichever is shorter, but*
35 *no later than 90 days prior to the expiration of the defendant's*
36 *term of commitment, a defendant who has not recovered mental*
37 *competence shall be returned to the committing court. The court*
38 *shall notify the community program director or a designee of the*
39 *return and of any resulting court orders.*

1 (2) Whenever any defendant is returned to the court pursuant
2 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
3 subdivision and it appears to the court that the defendant is gravely
4 disabled, as defined in subparagraph (B) of paragraph (1) of
5 subdivision (h) of Section 5008 of the Welfare and Institutions
6 Code, the court shall order the conservatorship investigator of the
7 county of commitment of the defendant to initiate conservatorship
8 proceedings for the defendant pursuant to Chapter 3 (commencing
9 with Section 5350) of Part 1 of Division 5 of the Welfare and
10 Institutions Code. Any hearings required in the conservatorship
11 proceedings shall be held in the superior court in the county that
12 ordered the commitment. The court shall transmit a copy of the
13 order directing initiation of conservatorship proceedings to the
14 community program director or a designee, the sheriff and the
15 district attorney of the county in which criminal charges are
16 pending, and the defendant's counsel of record. The court shall
17 notify the community program director or a designee, the sheriff
18 and district attorney of the county in which criminal charges are
19 pending, and the defendant's counsel of record of the outcome of
20 the conservatorship proceedings.

21 (3) If a change in placement is proposed for a defendant who
22 is committed pursuant to subparagraph (B) of paragraph (1) of
23 subdivision (h) of Section 5008 of the Welfare and Institutions
24 Code, the court shall provide notice and an opportunity to be heard
25 with respect to the proposed placement of the defendant to the
26 sheriff and the district attorney of the county in which *the* criminal
27 charges *or revocation proceedings* are pending.

28 (4) If the defendant is confined in a treatment facility, a copy
29 of any report to the committing court regarding the defendant's
30 progress toward recovery of mental competence shall be provided
31 by the committing court to the prosecutor and to the defense
32 counsel.

33 (d) ~~The~~ *With the exception of proceedings alleging a violation*
34 *of mandatory supervision, the* criminal action remains subject to
35 dismissal pursuant to Section 1385. If the criminal action is
36 dismissed, the court shall transmit a copy of the order of dismissal
37 to the community program director or a designee. *In a proceeding*
38 *alleging a violation of mandatory supervision, if the person is not*
39 *placed under a conservatorship as described in paragraph (2) of*
40 *subdivision (c), or if a conservatorship is terminated, the court*

1 *shall reinstate mandatory supervision and may modify the terms*
2 *and conditions of supervision to include appropriate mental health*
3 *treatment or refer the matter to a local mental health court, reentry*
4 *court, or other collaborative justice court available for improving*
5 *the mental health of the defendant.*

6 (e) If the criminal—~~charge~~ *action* against the defendant is
7 dismissed, the defendant shall be released from any commitment
8 ordered under this section, but without prejudice to the initiation
9 of any proceedings that may be appropriate under the
10 Lanterman-Petris-Short ~~Act, Part Act~~ (*Part 1* (commencing with
11 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~
12 *Code*).

13 (f) As used in this chapter, “community program director” means
14 the person, agency, or entity designated by the State Department
15 of State Hospitals pursuant to Section 1605 of this code and Section
16 4360 of the Welfare and Institutions Code.

17 (g) For the purpose of this section, “secure treatment facility”
18 shall not include, except for state mental hospitals, state
19 developmental centers, and correctional treatment facilities, any
20 facility licensed pursuant to Chapter 2 (commencing with Section
21 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
22 3.2 (commencing with Section 1569) of, Division 2 of the Health
23 and Safety Code, or any community board and care facility.

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

29 *SEC. 7.3. Section 1370 of the Penal Code is amended to read:*

30 1370. (a) (1) (A) If the defendant is found mentally
31 competent, the criminal process shall resume, the trial on the
32 offense charged *or hearing on the alleged violation* shall proceed,
33 and judgment may be pronounced.

34 (B) If the defendant is found mentally incompetent, ~~the trial or~~
35 *trial, the hearing on the alleged violation, or the judgment* shall
36 be suspended until the person becomes mentally competent.

37 (i) In the meantime, the court shall order that the mentally
38 incompetent defendant be delivered by the sheriff to a state hospital
39 for the care and treatment of the mentally disordered, as directed
40 by the State Department of State Hospitals, or to any other available

1 public or private treatment facility, including a local county jail
2 treatment facility or the community-based residential treatment
3 system established pursuant to Article 1 (commencing with Section
4 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
5 Institutions Code if the facility has a secured perimeter or a locked
6 and controlled treatment facility, approved by the community
7 program director that will promote the defendant's speedy
8 restoration to mental competence, or placed on outpatient status
9 as specified in Section 1600.

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

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

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

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

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

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

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

25 (2) Prior to making the order directing that the defendant be
26 committed to the State Department of State Hospitals or other
27 treatment facility or placed on outpatient status, the court shall
28 proceed as follows:

29 (A) The court shall order the community program director or a
30 designee to evaluate the defendant and to submit to the court within
31 15 judicial days of the order a written recommendation as to
32 whether the defendant should be required to undergo outpatient
33 treatment, or *be* committed to the State Department of State
34 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
35 be admitted to a state hospital or other treatment facility or placed
36 on outpatient status under this section without having been
37 evaluated by the community program director or a designee. The
38 community program director or designee shall evaluate the
39 appropriate placement for the defendant between the State
40 Department of State Hospitals, a local county jail treatment facility,

1 or the community-based residential treatment system based upon
2 guidelines provided by the State Department of State Hospitals.
3 If a local county jail treatment facility is selected, the State
4 Department of State Hospitals shall provide treatment at the county
5 jail treatment facility and reimburse the county jail treatment
6 facility for the reasonable costs of the bed during the treatment. If
7 the community-based residential treatment system is selected, the
8 State Department of State Hospitals shall provide reimbursement
9 to the community-based residential treatment system for the cost
10 of treatment as negotiated with the State Department of State
11 Hospitals. The six-month limitation in Section 1369.1 shall not
12 apply to individuals deemed incompetent to stand trial who are
13 being treated to restore competency within a county jail treatment
14 facility pursuant to this section.

15 (B) The court shall hear and determine whether the *defendant*
16 *lacks capacity to make decisions regarding the administration of*
17 *antipsychotic medication. The court shall consider opinions in the*
18 *reports prepared pursuant to subdivision (a) of Section 1369, as*
19 *applicable to the issue of whether the defendant lacks capacity to*
20 *make decisions regarding the administration of antipsychotic*
21 *medication, and shall proceed as follows:*

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

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

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

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

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

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

35 (iii) In all cases, the treating hospital, facility, or program may
36 administer medically appropriate antipsychotic medication
37 prescribed by a psychiatrist in an emergency as described in
38 subdivision (m) of Section 5008 of the Welfare and Institutions
39 Code.

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

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

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

37 (C) If the defendant consented to antipsychotic medication as
38 described in clause (iv) of subparagraph (B), but subsequently
39 withdraws his or her consent, or, if involuntary antipsychotic
40 medication was not ordered pursuant to clause (v) of subparagraph

1 (B), and the treating psychiatrist determines that antipsychotic
2 medication has become medically necessary and appropriate, the
3 treating psychiatrist shall make efforts to obtain informed consent
4 from the defendant for antipsychotic medication. If informed
5 consent is not obtained from the defendant, and the treating
6 psychiatrist is of the opinion that the defendant lacks capacity to
7 make decisions regarding antipsychotic medication based on the
8 conditions described in subclause (I) or (II) of clause (i) of
9 subparagraph (B), the treating psychiatrist shall certify whether
10 the lack of capacity and any applicable conditions described above
11 exist. That certification shall contain an assessment of the current
12 mental status of the defendant and the opinion of the treating
13 psychiatrist that involuntary antipsychotic medication has become
14 medically necessary and appropriate.

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

37 (I) To ~~being~~ *be* given timely access to the defendant's records.

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

40 (III) To present evidence at the hearing.

1 (IV) To question persons presenting evidence supporting
2 involuntary medication.

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

5 (VI) To a hearing conducted in an impartial and informal
6 manner.

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

20 (iii) If the administrative law judge disagrees with the
21 certification, medication may not be administered involuntarily
22 until the court determines that antipsychotic medication should be
23 administered pursuant to this section.

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

29 (v) If, as a result of the hearing, the court determines that
30 antipsychotic medication should be administered beyond the
31 certification period, the court shall issue an order authorizing the
32 administration of that medication.

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

37 (vii) *If the administrative law judge upholds the certification*
38 *pursuant to clause (ii), the court may, for a period not to exceed*
39 *14 days, extend the certification and continue the hearing pursuant*
40 *to stipulation between the parties or upon a finding of good cause.*

1 *In determining good cause, the court may review the petition filed*
2 *with the court, the administrative law judge's order, and any*
3 *additional testimony needed by the court to determine if it is*
4 *appropriate to continue medication beyond the 21-day certification*
5 *and for a period of up to 14 days.*

6 (viii) *The district attorney, county counsel, or representative of*
7 *any facility where a defendant found incompetent to stand trial is*
8 *committed may petition the court for an order to administer*
9 *involuntary medication pursuant to the criteria set forth in*
10 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
11 *order is reviewable as provided in paragraph (7).*

12 (3) When the court orders that the defendant be committed to
13 the State Department of State Hospitals or other public or private
14 treatment facility, the court shall provide copies of the following
15 documents prior to the admission of the defendant to the State
16 Department of State Hospitals or other treatment facility where
17 the defendant is to be committed:

18 (A) The commitment order, including a specification of the
19 charges.

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

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

25 (D) State summary criminal history information.

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

28 (F) Any court-ordered psychiatric examination or evaluation
29 reports.

30 (G) The community program director's placement
31 recommendation report.

32 (H) Records of any finding of mental incompetence pursuant
33 to this chapter arising out of a complaint charging a felony offense
34 specified in Section 290 or any pending Section 1368 proceeding
35 arising out of a charge of a Section 290 offense.

36 (I) Any medical records.

37 (4) When the defendant is committed to a treatment facility
38 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
39 court makes the findings specified in clause (ii) or (iii) of
40 subparagraph (B) of paragraph (1) to assign the defendant to a

1 treatment facility other than a state hospital or other secure
2 treatment facility, the court shall order that notice be given to the
3 appropriate law enforcement agency or agencies having local
4 jurisdiction at the site of the placement facility of any finding of
5 mental incompetence pursuant to this chapter arising out of a
6 charge of a Section 290 offense.

7 (5) When directing that the defendant be confined in a state
8 hospital pursuant to this subdivision, the court shall commit the
9 patient to the State Department of State Hospitals.

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

34 Prior to making an order for transfer under this section, the court
35 shall notify the defendant, the attorney of record for the defendant,
36 the prosecuting attorney, and the community program director or
37 a designee.

38 (B) If the defendant is initially committed to the State
39 Department of State Hospitals or secure treatment facility pursuant
40 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is

1 subsequently transferred to any other facility, copies of the
2 documents specified in paragraph (3) shall be taken with the
3 defendant to each subsequent facility to which the defendant is
4 transferred. The transferring facility shall also notify the appropriate
5 law enforcement agency or agencies having local jurisdiction at
6 the site of the new facility that the defendant is a person subject
7 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

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

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

35 (b) (1) Within 90 days of a commitment made pursuant to
36 subdivision (a), the medical director of the state hospital or other
37 treatment facility to which the defendant is confined shall make a
38 written report to the court and the community program director
39 for the county or region of commitment, or a designee, concerning
40 the defendant's progress toward recovery of mental ~~competence~~.

1 *competence and whether the administration of antipsychotic*
2 *medication remains necessary.* If the defendant is on outpatient
3 status, the outpatient treatment staff shall make a written report to
4 the community program director concerning the defendant's
5 progress toward recovery of mental competence. Within 90 days
6 of placement on outpatient status, the community program director
7 shall report to the court on this matter. If the defendant has not
8 recovered mental competence, but the report discloses a substantial
9 likelihood that the defendant will regain mental competence in the
10 foreseeable future, the defendant shall remain in the state hospital
11 or other treatment facility or on outpatient status. Thereafter, at
12 six-month intervals or until the defendant becomes mentally
13 competent, if the defendant is confined in a treatment facility, the
14 medical director of the hospital or person in charge of the facility
15 shall report in writing to the court and the community program
16 director or a designee regarding the defendant's progress toward
17 recovery of mental ~~competence~~. *competence and whether the*
18 *administration of antipsychotic medication remains necessary.* If
19 the defendant is on outpatient status, after the initial 90-day report,
20 the outpatient treatment staff shall report to the community program
21 director on the defendant's progress toward recovery, and the
22 community program director shall report to the court on this matter
23 at six-month intervals. A copy of these reports shall be provided
24 to the prosecutor and defense counsel by the court. †

25 (A) *If the report indicates that there is no substantial likelihood*
26 *that the defendant will regain mental competence in the foreseeable*
27 *future, the committing court shall order the defendant to be returned*
28 *to the court for proceedings pursuant to paragraph (2) of*
29 *subdivision (e). (c) no later than 10 days following receipt of the*
30 *report.* The court shall transmit a copy of its order to the
31 community program director or a designee.

32 (B) *If the report indicates that there is no substantial likelihood*
33 *that the defendant will regain mental competence in the foreseeable*
34 *future, the medical director of the state hospital or other treatment*
35 *facility to which the defendant is confined shall do both of the*
36 *following:*

37 (i) *Promptly notify and provide a copy of the report to the*
38 *defense counsel and the district attorney.*

1 (ii) Provide a separate notification, in compliance with
2 applicable privacy laws, to the committing county's sheriff that
3 transportation will be needed for the patient.

4 (2) If the court has issued an order authorizing the treating
5 facility to involuntarily administer antipsychotic medication to the
6 defendant, the reports made ~~at six-month intervals~~ pursuant to
7 paragraph (1) concerning the defendant's progress toward
8 regaining competency shall also consider the issue of involuntary
9 medication. Each report shall include, but is not limited to, all the
10 following:

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

13 (B) If the defendant lacks capacity to make decisions concerning
14 antipsychotic medication, whether the defendant risks serious harm
15 to his or her physical or mental health if not treated with
16 antipsychotic medication.

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

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

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

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

25 (G) How quickly the medication is likely to bring the defendant
26 to competency.

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

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

31 (3) After reviewing the reports, the court shall determine whether
32 or not grounds for the order authorizing involuntary administration
33 of antipsychotic medication still exist and shall do one of the
34 following:

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

38 (B) If the original grounds for involuntary medication no longer
39 exist, and there is no other basis for involuntary administration of

1 antipsychotic medication, the order for the involuntary
2 administration of antipsychotic medication shall be vacated.

3 (C) If the original grounds for involuntary medication no longer
4 exist, and the report states that there is another basis for involuntary
5 administration of antipsychotic medication, the court shall set a
6 hearing within 21 days to determine whether the order for the
7 involuntary administration of antipsychotic medication shall be
8 vacated or whether a new order for the involuntary administration
9 of antipsychotic medication shall be issued. The hearing shall
10 proceed as set forth in subparagraph (B) of paragraph (2) of
11 subdivision (a).

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

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

23 (6) At each review by the court specified in this subdivision,
24 the court shall determine if the security level of housing and
25 treatment is appropriate and may make an order in accordance
26 with its determination. If the court determines that the defendant
27 shall continue to be treated in the state hospital or on an outpatient
28 basis, the court shall determine issues concerning administration
29 of antipsychotic medication, as set forth in subparagraph (B) of
30 paragraph (2) of subdivision (a).

31 (c) (1) At the end of three years from the date of commitment
32 or a period of commitment equal to the maximum term of
33 imprisonment provided by law for the most serious offense charged
34 in the information, indictment, or misdemeanor complaint, *or the*
35 *maximum term of imprisonment provided by law for a violation*
36 *of probation or mandatory supervision, whichever is shorter, but*
37 *no later than 90 days prior to the expiration of the defendant's*
38 *term of commitment*, a defendant who has not recovered mental
39 competence shall be returned to the committing court. The court

1 shall notify the community program director or a designee of the
2 return and of any resulting court orders.

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

23 (3) If a change in placement is proposed for a defendant who
24 is committed pursuant to subparagraph (B) of paragraph (1) of
25 subdivision (h) of Section 5008 of the Welfare and Institutions
26 Code, the court shall provide notice and an opportunity to be heard
27 with respect to the proposed placement of the defendant to the
28 sheriff and the district attorney of the county in which *the* criminal
29 charges *or revocation proceedings* are pending.

30 (4) If the defendant is confined in a treatment facility, a copy
31 of any report to the committing court regarding the defendant's
32 progress toward recovery of mental competence shall be provided
33 by the committing court to the prosecutor and to the defense
34 counsel.

35 (d) ~~The~~ *With the exception of proceedings alleging a violation*
36 *of mandatory supervision, the* criminal action remains subject to
37 dismissal pursuant to Section 1385. If the criminal action is
38 dismissed, the court shall transmit a copy of the order of dismissal
39 to the community program director or a designee. *In a proceeding*
40 *alleging a violation of mandatory supervision, if the person is not*

1 *placed under a conservatorship as described in paragraph (2) of*
 2 *subdivision (c), or if a conservatorship is terminated, the court*
 3 *shall reinstate mandatory supervision and may modify the terms*
 4 *and conditions of supervision to include appropriate mental health*
 5 *treatment or refer the matter to a local mental health court, reentry*
 6 *court, or other collaborative justice court available for improving*
 7 *the mental health of the defendant.*

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

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

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

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

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

32 1370.01. (a) (1) If the defendant is found mentally competent,
 33 the criminal process shall resume, the trial on the offense charged
 34 shall proceed, and judgment may be pronounced. If the defendant
 35 is found mentally incompetent, the trial, judgment, or hearing on
 36 the alleged violation shall be suspended until the person becomes
 37 mentally competent, and the court shall order that (A) in the
 38 meantime, the defendant be delivered by the sheriff to an available
 39 public or private treatment facility approved by the county mental
 40 health director that will promote the defendant’s speedy restoration

1 to mental competence, or placed on outpatient status as specified
2 in this section, and (B) upon the filing of a certificate of restoration
3 to competence, the defendant be returned to court in accordance
4 with Section 1372. The court shall transmit a copy of its order to
5 the county mental health director or his or her designee.

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

9 (A) The court shall order the county mental health director or
10 his or her designee to evaluate the defendant and to submit to the
11 court within 15 judicial days of the order a written recommendation
12 as to whether the defendant should be required to undergo
13 outpatient treatment, or committed to a treatment facility. No
14 person shall be admitted to a treatment facility or placed on
15 outpatient status under this section without having been evaluated
16 by the county mental health director or his or her designee. No
17 person shall be admitted to a state hospital under this section unless
18 the county mental health director finds that there is no less
19 restrictive appropriate placement available and the county mental
20 health director has a contract with the State Department of State
21 Hospitals for these placements.

22 (B) The court shall hear and determine whether the defendant,
23 with advice of his or her counsel, consents to the administration
24 of antipsychotic medication, and shall proceed as follows:

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

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

38 (I) The defendant lacks capacity to make decisions regarding
39 antipsychotic medication, the defendant's mental disorder requires
40 medical treatment with antipsychotic medication, and, if the

1 defendant's mental disorder is not treated with antipsychotic
2 medication, it is probable that serious harm to the physical or
3 mental health of the patient will result. Probability of serious harm
4 to the physical or mental health of the defendant requires evidence
5 that the defendant is presently suffering adverse effects to his or
6 her physical or mental health, or the defendant has previously
7 suffered these effects as a result of a mental disorder and his or
8 her condition is substantially deteriorating. The fact that a
9 defendant has a diagnosis of a mental disorder does not alone
10 establish probability of serious harm to the physical or mental
11 health of the defendant.

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

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

36 (iii) If the court finds any of the conditions described in clause
37 (ii) to be true, the court shall issue an order authorizing the
38 treatment facility to involuntarily administer antipsychotic
39 medication to the defendant when and as prescribed by the
40 defendant's treating psychiatrist. The court shall not order

1 involuntary administration of psychotropic medication under
2 subclause (III) of clause (ii) unless the court has first found that
3 the defendant does not meet the criteria for involuntary
4 administration of psychotropic medication under subclause (I) of
5 clause (ii) and does not meet the criteria under subclause (II) of
6 clause (ii).

7 (iv) In all cases, the treating hospital, facility, or program may
8 administer medically appropriate antipsychotic medication
9 prescribed by a psychiatrist in an emergency as described in
10 subdivision (m) of Section 5008 of the Welfare and Institutions
11 Code.

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

26 (C) If the defendant consented to antipsychotic medication as
27 described in clause (i) of subparagraph (B), but subsequently
28 withdraws his or her consent, or, if involuntary antipsychotic
29 medication was not ordered pursuant to clause (ii) of subparagraph
30 (B), and the treating psychiatrist determines that antipsychotic
31 medication has become medically necessary and appropriate, the
32 treating psychiatrist shall make efforts to obtain informed consent
33 from the defendant for antipsychotic medication. If informed
34 consent is not obtained from the defendant, and the treating
35 psychiatrist is of the opinion that the defendant lacks capacity to
36 make decisions regarding antipsychotic medication as specified
37 in subclause (I) of clause (ii) of subparagraph (B), or that the
38 defendant is a danger to others as specified in subclause (II) of
39 clause (ii) of subparagraph (B), the committing court shall be
40 notified of this, including an assessment of the current mental

1 status of the defendant and the opinion of the treating psychiatrist
2 that involuntary antipsychotic medication has become medically
3 necessary and appropriate. The court shall provide copies of the
4 report to the prosecuting attorney and to the attorney representing
5 the defendant and shall set a hearing to determine whether
6 involuntary antipsychotic medication should be ordered in the
7 manner described in subparagraph (B).

8 (3) When the court, after considering the placement
9 recommendation of the county mental health director required in
10 paragraph (2), orders that the defendant be confined in a public or
11 private treatment facility, the court shall provide copies of the
12 following documents which shall be taken with the defendant to
13 the treatment facility where the defendant is to be confined:

14 (A) The commitment order, including a specification of the
15 charges.

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

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

21 (D) State summary criminal history information.

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

24 (F) Any court-ordered psychiatric examination or evaluation
25 reports.

26 (G) The county mental health director's placement
27 recommendation report.

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

35 (5) If the defendant is committed or transferred to a public or
36 private treatment facility approved by the county mental health
37 director, the court may, upon receiving the written recommendation
38 of the county mental health director, transfer the defendant to
39 another public or private treatment facility approved by the county
40 mental health director. In the event of dismissal of the criminal

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

12 Prior to making an order for transfer under this section, the court
13 shall notify the defendant, the attorney of record for the defendant,
14 the prosecuting attorney, and the county mental health director or
15 his or her designee.

16 (b) Within 90 days of a commitment made pursuant to
17 subdivision (a), the medical director of the treatment facility to
18 which the defendant is confined shall make a written report to the
19 court and the county mental health director or his or her designee,
20 concerning the defendant's progress toward recovery of mental
21 competence. Where the defendant is on outpatient status, the
22 outpatient treatment staff shall make a written report to the county
23 mental health director concerning the defendant's progress toward
24 recovery of mental competence. Within 90 days of placement on
25 outpatient status, the county mental health director shall report to
26 the court on this matter. If the defendant has not recovered mental
27 competence, but the report discloses a substantial likelihood that
28 the defendant will regain mental competence in the foreseeable
29 future, the defendant shall remain in the treatment facility or on
30 outpatient status. Thereafter, at six-month intervals or until the
31 defendant becomes mentally competent, where the defendant is
32 confined in a treatment facility, the medical director of the hospital
33 or person in charge of the facility shall report in writing to the
34 court and the county mental health director or a designee regarding
35 the defendant's progress toward recovery of mental competence.
36 Where the defendant is on outpatient status, after the initial 90-day
37 report, the outpatient treatment staff shall report to the county
38 mental health director on the defendant's progress toward recovery,
39 and the county mental health director shall report to the court on
40 this matter at six-month intervals. A copy of these reports shall be

1 provided to the prosecutor and defense counsel by the court. If the
2 report indicates that there is no substantial likelihood that the
3 defendant will regain mental competence in the foreseeable future,
4 the committing court shall order the defendant to be returned to
5 the court for proceedings pursuant to paragraph (2) of subdivision
6 (c). The court shall transmit a copy of its order to the county mental
7 health director or his or her designee.

8 (c) (1) If, at the end of one year from the date of commitment
9 or a period of commitment equal to the maximum term of
10 imprisonment provided by law for the most serious offense charged
11 in the misdemeanor complaint, whichever is shorter, the defendant
12 has not recovered mental competence, the defendant shall be
13 returned to the committing court. The court shall notify the county
14 mental health director or his or her designee of the return and of
15 any resulting court orders.

16 (2) Whenever any defendant is returned to the court pursuant
17 to subdivision (b) or paragraph (1) of this subdivision and it appears
18 to the court that the defendant is gravely disabled, as defined in
19 subparagraph (A) of paragraph (1) of subdivision (h) of Section
20 5008 of the Welfare and Institutions Code, the court shall order
21 the conservatorship investigator of the county of commitment of
22 the defendant to initiate conservatorship proceedings for the
23 defendant pursuant to Chapter 3 (commencing with Section 5350)
24 of Part 1 of Division 5 of the Welfare and Institutions Code. Any
25 hearings required in the conservatorship proceedings shall be held
26 in the superior court in the county that ordered the commitment.
27 The court shall transmit a copy of the order directing initiation of
28 conservatorship proceedings to the county mental health director
29 or his or her designee and shall notify the county mental health
30 director or his or her designee of the outcome of the proceedings.

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

35 (e) If the criminal charge against the defendant is dismissed,
36 the defendant shall be released from any commitment ordered
37 under this section, but without prejudice to the initiation of any
38 proceedings which may be appropriate under Part 1 (commencing
39 with Section 5000) of Division 5 of the Welfare and Institutions
40 Code.

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

2 1370.02. (a) If the defendant is found mentally competent
3 during a postrelease community supervision or parole revocation
4 hearing, the revocation proceedings shall resume. The formal
5 hearing on the revocation shall occur within a reasonable time
6 after resumption of the proceedings, but in no event may the
7 defendant be detained in custody for over 180 days from the date
8 of arrest.

9 (b) If the defendant is found mentally incompetent, the court
10 shall ~~have discretion to order any of the following: dismiss the~~
11 ~~pending revocation matter and return the defendant to supervision.~~
12 ~~If the revocation matter is dismissed pursuant to this subdivision,~~
13 ~~the court may, using the least restrictive option to meet the mental~~
14 ~~health needs of the defendant, also do any of the following:~~

15 ~~(1) (A) If the court determines that there is a reasonable~~
16 ~~likelihood that the defendant may be restored to competency and~~
17 ~~returned to court to face the revocation proceedings no later than~~
18 ~~180 days from the date of the arrest of the defendant, the court~~
19 ~~may order the defendant to undergo treatment as authorized by~~
20 ~~Section 1370 or 1370.1 for restoring the defendant to competency,~~
21 ~~except that:~~

22 ~~(i) The initial written progress report due to the court pursuant~~
23 ~~to subdivision (b) of Section 1370 shall be provided to the court~~
24 ~~within 45 days and subsequent progress reports shall be provided~~
25 ~~to the court at two-month intervals.~~

26 ~~(ii) The initial written progress report due to the court under~~
27 ~~subdivision (b) of Section 1370.1 shall be provided to the court~~
28 ~~within 45 days of the commitment and subsequent progress reports~~
29 ~~shall be provided within 90 days.~~

30 ~~(B) If the defendant is restored to competency within 180 days~~
31 ~~of arrest, the defendant shall be returned to court under the~~
32 ~~procedures required by Section 1372.~~

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

36 ~~(2) Dismiss the pending revocation matter and return the~~
37 ~~defendant to supervision. If the matter is dismissed pursuant to~~
38 ~~this paragraph, the court may also:~~

39 ~~(A)~~

1 (1) Modify the terms and conditions of supervision to include
2 appropriate mental health treatment.

3 ~~(B) Refer the matter to the public guardian of the county of
4 commitment to initiate conservatorship proceedings.~~

5 ~~(3)~~

6 (2) Refer the matter to any local mental health court, reentry
7 court, or other collaborative justice court available for improving
8 the mental health of the defendant.

9 (3) *Refer the matter to the public guardian of the county of
10 commitment to initiate conservatorship proceedings pursuant to
11 Sections 5352 and 5352.5 of the Welfare and Institutions Code.
12 The public guardian shall investigate all available alternatives to
13 conservatorship pursuant to Section 5354 of the Welfare and
14 Institutions Code. The court shall order the matter to the public
15 guardian pursuant to this paragraph only if there are no other
16 reasonable alternatives to the establishment of a conservatorship
17 to meet the mental health needs of the defendant.*

18 (c) (1) Notwithstanding any other law, if a person subject to
19 parole pursuant to Section 3000.1 or paragraph (4) of subdivision
20 (b) of Section 3000 is found mentally incompetent, the court shall
21 order the ~~person parolee~~ to undergo treatment pursuant to Section
22 1370 for restoring the person to competency, except that if the
23 ~~person parolee~~ is not restored to competency within the maximum
24 period of confinement and the court dismisses the revocation, the
25 court shall return the ~~person parolee~~ to parole ~~supervision~~, refer
26 the matter to the public guardian of the county of commitment to
27 initiate conservatorship proceedings, or refer the person to other
28 appropriate mental health treatment based upon any
29 recommendations by the parole agent and mental health experts.
30 supervision.

31 (2) *If the parolee is returned to parole supervision, the court
32 may, using the least restrictive option to meet the mental health
33 needs of the parolee, do any of the following:*

34 (A) *Modify the terms and conditions of parole to include
35 appropriate mental health treatment.*

36 (B) *Refer the matter to any local mental health court, reentry
37 court, or other collaborative justice court available for improving
38 the mental health of the parolee.*

39 (C) *Refer the matter to the public guardian of the county of
40 commitment to initiate conservatorship proceedings pursuant to*

1 *Sections 5352 and 5352.5 of the Welfare and Institutions Code.*
2 *The public guardian shall investigate all available alternatives to*
3 *conservatorship pursuant to Section 5354 of the Welfare and*
4 *Institutions Code. The court shall order the matter to the public*
5 *guardian pursuant to this subparagraph only if there are no other*
6 *reasonable alternatives to the establishment of a conservatorship*
7 *to meet the mental health needs of the parolee.*

8 *(d) If a conservatorship is established for a defendant or parolee*
9 *pursuant to subdivision (b) or (c), the county or the Department*
10 *of Corrections and Rehabilitation shall not compassionately*
11 *release the defendant or parolee or otherwise cause the termination*
12 *of his or her supervision or parole based on the establishment of*
13 *that conservatorship.*

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

15 1370.1. (a) (1) (A) If the defendant is found mentally
16 competent, the criminal process shall resume, the trial on the
17 offense charged or hearing on the alleged violation shall proceed,
18 and judgment may be pronounced.

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

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

36 (ii) However, if the action against the defendant who has been
37 found mentally incompetent is on a complaint charging a felony
38 offense specified in Section 290, the prosecutor shall determine
39 whether the defendant previously has been found mentally
40 incompetent to stand trial pursuant to this chapter on a charge of

1 a Section 290 offense, or whether the defendant is currently the
2 subject of a pending Section 1368 proceeding arising out of a
3 charge of a Section 290 offense. If either determination is made,
4 the prosecutor shall so notify the court and defendant in writing.
5 After this notification, and opportunity for hearing, the court shall
6 order that the defendant be delivered by the sheriff to a state
7 hospital or other secure treatment facility for the care and treatment
8 of the developmentally disabled unless the court makes specific
9 findings on the record that an alternative placement would provide
10 more appropriate treatment for the defendant and would not pose
11 a danger to the health and safety of others.

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

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

29 (C) Upon becoming competent, the court shall order that the
30 defendant be returned to the committing court pursuant to the
31 procedures set forth in paragraph (2) of subdivision (a) of Section
32 1372 or by another person designated by the court. The court shall
33 further determine conditions under which the person may be absent
34 from the placement for medical treatment, social visits, and other
35 similar activities. Required levels of supervision and security for
36 these activities shall be specified.

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

1 (E) A defendant charged with a violent felony may not be placed
2 in a facility or delivered to a state hospital, developmental center,
3 or residential facility pursuant to this subdivision unless the facility,
4 state hospital, developmental center, or residential facility has a
5 secured perimeter or a locked and controlled treatment facility,
6 and the judge determines that the public safety will be protected.

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

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

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

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

38 (3) When the court orders that the defendant be confined in a
39 state hospital or other secure treatment facility pursuant to clause
40 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall

1 provide copies of the following documents which shall be taken
2 with the defendant to the state hospital or other secure treatment
3 facility where the defendant is to be confined:

4 (A) State summary criminal history information.

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

7 (C) Records of a finding of mental incompetence pursuant to
8 this chapter arising out of a complaint charging a felony offense
9 specified in Section 290 or a pending Section 1368 proceeding
10 arising out of a charge of a Section 290 offense.

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

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

33 In the event of dismissal of the criminal action or revocation
34 proceedings before the defendant recovers competence, the person
35 shall be subject to the applicable provisions of the
36 Lanterman-Petris-Short Act (Part 1 (commencing with Section
37 5000) of Division 5 of the Welfare and Institutions Code) or to
38 commitment or detention pursuant to a petition filed pursuant to
39 Section 6502 of the Welfare and Institutions Code.

1 The defendant or prosecuting attorney may contest either kind
2 of order of transfer by filing a petition with the court for a hearing,
3 which shall be held if the court determines that sufficient grounds
4 exist. At the hearing, the prosecuting attorney or the defendant
5 may present evidence bearing on the order of transfer. The court
6 shall use the same standards as used in conducting probation
7 revocation hearings pursuant to Section 1203.2.

8 Prior to making an order for transfer under this section, the court
9 shall notify the defendant, the attorney of record for the defendant,
10 the prosecuting attorney, and the regional center director or
11 designee.

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

21 (b) (1) Within 90 days of admission of a person committed
22 pursuant to subdivision (a), the executive director or designee of
23 the state hospital, developmental center, or other facility to which
24 the defendant is committed, or the outpatient supervisor where the
25 defendant is placed on outpatient status, shall make a written report
26 to the committing court and the regional center director or a
27 designee concerning the defendant's progress toward becoming
28 mentally competent. If the defendant has not become mentally
29 competent, but the report discloses a substantial likelihood the
30 defendant will become mentally competent within the next 90
31 days, the court may order that the defendant shall remain in the
32 state hospital, developmental center, or other facility or on
33 outpatient status for that period of time. Within 150 days of an
34 admission made pursuant to subdivision (a) or if the defendant
35 becomes mentally competent, the executive director or designee
36 of the hospital or developmental center or person in charge of the
37 facility or the outpatient supervisor shall report to the court and
38 the regional center director or his or her designee regarding the
39 defendant's progress toward becoming mentally competent. The
40 court shall provide to the prosecutor and defense counsel copies

1 of all reports under this section. If the report indicates that there
2 is no substantial likelihood that the defendant has become mentally
3 competent, the committing court shall order the defendant to be
4 returned to the court for proceedings pursuant to paragraph (2) of
5 subdivision (c). The court shall transmit a copy of its order to the
6 regional center director or designee and to the executive director
7 of the developmental center.

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

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

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

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

32 (B) The court shall notify the regional center director or designee
33 and the executive director of the developmental center of that
34 return and of any resulting court orders.

35 (2) (A) Except as provided in subparagraph (B), in the event
36 of dismissal of the criminal charges before the defendant becomes
37 mentally competent, the defendant shall be subject to the applicable
38 provisions of the Lanterman-Petris-Short Act (Part 1 (commencing
39 with Section 5000) of Division 5 of the Welfare and Institutions
40 Code), or to commitment and detention pursuant to a petition filed

1 pursuant to Section 6502 of the Welfare and Institutions Code. If
2 it is found that the person is not subject to commitment or detention
3 pursuant to the applicable provision of the Lanterman-Petris-Short
4 Act (Part 1 (commencing with Section 5000) of Division 5 of the
5 Welfare and Institutions Code) or to commitment or detention
6 pursuant to a petition filed pursuant to Section 6502 of the Welfare
7 and Institutions Code, the individual shall not be subject to further
8 confinement pursuant to this article and the criminal action remains
9 subject to dismissal pursuant to Section 1385. The court shall notify
10 the regional center director and the executive director of the
11 developmental center of any dismissal.

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

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

1 dismissal to the regional center director and to the executive
2 director of the developmental center.

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

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

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

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

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

32 1371. The commitment of the defendant, as described in
33 Section 1370, 1370.1, 1370.01, or 1370.02, exonerates his or her
34 bail, or entitles a person, authorized to receive the property of the
35 defendant, to a return of any money he or she may have deposited
36 instead of bail, or gives, to the person or persons found by the court
37 to have deposited any money instead of bail on behalf of the
38 defendant, a right to the return of that money.

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

1 1373. The expense of sending the defendant to the state hospital
2 or other facility, and of bringing him or her back, are chargeable
3 to the county in which the indictment was found, information was
4 filed, or revocation proceeding was held; but the county may
5 recover the expense from the estate of the defendant, if he or she
6 has any, or from a relative, bound to provide for and maintain him
7 or her.

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

9 1375.5. (a) Time spent by a defendant in a hospital or other
10 facility as a result of a commitment therein as a mentally
11 incompetent pursuant to this chapter shall be credited on the term
12 of imprisonment, if any, for which the defendant is sentenced in
13 the criminal case which was suspended pursuant to Section 1370,
14 1370.1, or 1370.01.

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

19 ~~(c)~~

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

23 SEC. 15. (a) *Section 7.1 of this bill incorporates amendments*
24 *to Section 1370 of the Penal Code proposed by both this bill and*
25 *Assembly Bill 2186. It shall only become operative if (1) both bills*
26 *are enacted and become effective on or before January 1, 2015,*
27 *(2) each bill amends Section 1370 of the Penal Code, (3) Assembly*
28 *Bill 2625 is not enacted or as enacted does not amend that section,*
29 *and (4) this bill is enacted after Assembly Bill 2186, in which case*
30 *Sections 7, 7.2, and 7.3 of this bill shall not become operative.*

31 (b) *Section 7.2 of this bill incorporates amendments to Section*
32 *1370 of the Penal Code proposed by both this bill and Assembly*
33 *Bill 2625. It shall only become operative if (1) both bills are*
34 *enacted and become effective on or before January 1, 2015, (2)*
35 *each bill amends Section 1370 of the Penal Code, (3) Assembly*
36 *Bill 2186 is not enacted or as enacted does not amend that section,*
37 *and (4) this bill is enacted after Assembly Bill 2625 in which case*
38 *Sections 7, 7.1, and 7.3 of this bill shall not become operative.*

39 (c) *Section 7.3 of this bill incorporates amendments to Section*
40 *1370 of the Penal Code proposed by this bill, Assembly Bill 2186,*

1 *and Assembly Bill 2625. It shall only become operative if (1) all*
2 *three bills are enacted and become effective on or before January*
3 *1, 2015, (2) all three bills amend Section 1370 of the Penal Code,*
4 *and (3) this bill is enacted after Assembly Bill 2186 and Assembly*
5 *Bill 2625, in which case Sections 7, 7.1, and 7.2 of this bill shall*
6 *not become operative.*

7 ~~SEC. 15.~~

8 *SEC. 16.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.