

ASSEMBLY BILL

No. 1962

Introduced by Assembly Member Dodd

February 12, 2016

An act to amend Section 1369 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1962, as introduced, Dodd. Criminal proceedings: mental competence.

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, which includes requiring the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate.

This bill would require psychiatrists, licensed psychologists, and any other expert the court deems appropriate to have forensic experience.

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

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

- 1 SECTION 1. Section 1369 of the Penal Code is amended to
- 2 read:
- 3 1369. Except as stated in subdivision (g), a trial by court or
- 4 jury of the question of mental competence shall proceed in the
- 5 following order:

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

1 be confined for examination in a residential facility or state
2 hospital.

3 The regional center director shall recommend to the court a
4 suitable residential facility or state hospital. Prior to issuing an
5 order pursuant to this section, the court shall consider the
6 recommendation of the regional center director. While the person
7 is confined pursuant to order of the court under this section, he or
8 she shall be provided with necessary care and treatment.

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

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

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

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

18 (e) When the evidence is concluded, unless the case is submitted
19 without final argument, the prosecution shall make its final
20 argument and the defense shall conclude with its final argument
21 to the court or jury.

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

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

31 (h) *Psychiatrists and licensed psychologists appointed by the*
32 *court pursuant to this section shall possess forensic experience.*