

AMENDED IN SENATE JUNE 6, 2016
AMENDED IN ASSEMBLY MARCH 30, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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, on or before July 1, 2017, require the State Department of State Hospitals, through the use of a workgroup representing specified groups, to adopt guidelines ~~establishing minimum~~ *for* education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court. *The bill would provide that if there is no reasonably available expert who meets the guidelines, the court shall have discretion to appoint an expert who does not meet the guidelines.*

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

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

1 SECTION 1. Section 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:

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

1 appropriate to administer antipsychotic medication in the county
2 jail. If it is suspected the defendant is developmentally disabled,
3 the court shall appoint the director of the regional center for the
4 developmentally disabled established under Division 4.5
5 (commencing with Section 4500) of the Welfare and Institutions
6 Code, or the designee of the director, to examine the defendant.
7 The court may order the developmentally disabled defendant to
8 be confined for examination in a residential facility or state
9 hospital.

10 The regional center director shall recommend to the court a
11 suitable residential facility or state hospital. Prior to issuing an
12 order pursuant to this section, the court shall consider the
13 recommendation of the regional center director. While the person
14 is confined pursuant to order of the court under this section, he or
15 she shall be provided with necessary care and treatment.

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

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

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

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

25 (e) When the evidence is concluded, unless the case is submitted
26 without final argument, the prosecution shall make its final
27 argument and the defense shall conclude with its final argument
28 to the court or jury.

29 (f) In a jury trial, the court shall charge the jury, instructing
30 them on all matters of law necessary for the rendering of a verdict.
31 It shall be presumed that the defendant is mentally competent
32 unless it is proved by a preponderance of the evidence that the
33 defendant is mentally incompetent. The verdict of the jury shall
34 be unanimous.

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

38 (h) (1) The State Department of State Hospitals shall, on or
39 before July 1, 2017, adopt guidelines ~~establishing minimum~~ *for*
40 education and training standards for a psychiatrist or licensed

1 psychologist to be considered for appointment by the court pursuant
2 to this section. To develop these guidelines, the State Department
3 of State Hospitals shall convene a workgroup comprised of the
4 Judicial Council and groups or individuals representing judges,
5 defense counsel, district attorneys, counties, advocates for people
6 with developmental and mental disabilities, state psychologists
7 and psychiatrists, professional associations and accrediting bodies
8 for psychologists and psychiatrists, and other interested
9 ~~stakeholders in the development of the guidelines.~~ *stakeholders.*

10 (2) *When making appointments pursuant to this section, the*
11 *court shall appoint experts who meet the guidelines established*
12 *in accordance with this subdivision or experts with equivalent*
13 *experience and skills. If there is no reasonably available expert*
14 *who meets the guidelines or who has equivalent experience and*
15 *skills, the court shall have the discretion to appoint an expert who*
16 *does not meet the guidelines.*