

AMENDED IN ASSEMBLY JUNE 23, 2015

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 453

Introduced by Senator Pan

February 25, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Pan. Prisons: involuntary medication.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

Under existing law, if consent for antipsychotic medication is withdrawn or if the treating psychiatrist later determines that antipsychotic medication is medically necessary and appropriate, the treating psychiatrist is required to make efforts to obtain consent for that medication. Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary

and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize the treating psychiatrist, if he or she determines that there is a need, based on ~~factors such as~~ preserving rapport with the patient *or preventing harm*, to request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist for purposes of involuntary medication. If the medical director of the facility designates another psychiatrist to act, this bill would require the treating psychiatrist to brief the acting psychiatrist of the relevant facts of the case and would require the acting psychiatrist to examine the patient prior to the hearing.

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 1370 of the Penal Code is amended to
2 read:
3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged or hearing on the alleged violation shall proceed,
6 and judgment may be pronounced.
7 (B) If the defendant is found mentally incompetent, the trial,
8 the hearing on the alleged violation, or the judgment shall be
9 suspended until the person becomes mentally competent.
10 (i) In the meantime, the court shall order that the mentally
11 incompetent defendant be delivered by the sheriff to a state hospital
12 for the care and treatment of the mentally disordered, as directed
13 by the State Department of State Hospitals, or to any other available
14 public or private treatment facility, including a local county jail
15 treatment facility or the community-based residential treatment
16 system established pursuant to Article 1 (commencing with Section
17 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
18 Institutions Code if the facility has a secured perimeter or a locked
19 and controlled treatment facility, approved by the community
20 program director that will promote the defendant's speedy

1 restoration to mental competence, or placed on outpatient status
2 as specified in Section 1600.

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

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

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

38 (C) Upon the filing of a certificate of restoration to competence,
39 the court shall order that the defendant be returned to court in

1 accordance with Section 1372. The court shall transmit a copy of
2 its order to the community program director or a designee.

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

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

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

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

23 (A) The court shall order the community program director or a
24 designee to evaluate the defendant and to submit to the court within
25 15 judicial days of the order a written recommendation as to
26 whether the defendant should be required to undergo outpatient
27 treatment, or be committed to the State Department of State
28 Hospitals or to any other treatment facility. A person shall not be
29 admitted to a state hospital or other treatment facility or placed on
30 outpatient status under this section without having been evaluated
31 by the community program director or a designee. The community
32 program director or designee shall evaluate the appropriate
33 placement for the defendant between the State Department of State
34 Hospitals, a local county jail treatment facility, or the
35 community-based residential treatment system based upon
36 guidelines provided by the State Department of State Hospitals.
37 If a local county jail treatment facility is selected, the State
38 Department of State Hospitals shall provide treatment at the county
39 jail treatment facility and reimburse the county jail treatment
40 facility for the reasonable costs of the bed during the treatment. If

1 the community-based residential treatment system is selected, the
2 State Department of State Hospitals shall provide reimbursement
3 to the community-based residential treatment system for the cost
4 of treatment as negotiated with the State Department of State
5 Hospitals. The six-month limitation in Section 1369.1 shall not
6 apply to individuals deemed incompetent to stand trial who are
7 being treated to restore competency within a county jail treatment
8 facility pursuant to this section.

9 (B) The court shall hear and determine whether the defendant
10 lacks capacity to make decisions regarding the administration of
11 antipsychotic medication. The court shall consider opinions in the
12 reports prepared pursuant to subdivision (a) of Section 1369, as
13 applicable to the issue of whether the defendant lacks capacity to
14 make decisions regarding the administration of antipsychotic
15 medication, and shall proceed as follows:

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

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

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

1 the defendant's present mental condition, including a consideration
2 of past behavior of the defendant within six years prior to the time
3 the defendant last attempted to inflict, inflicted, or threatened to
4 inflict substantial physical harm on another, and other relevant
5 evidence.

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

16 (ii) If the court finds any of the conditions described in clause
17 (i) to be true, the court shall issue an order authorizing involuntary
18 administration of antipsychotic medication to the defendant when
19 and as prescribed by the defendant's treating psychiatrist at any
20 facility housing the defendant for purposes of this chapter. The
21 order shall be valid for no more than one year, pursuant to
22 subparagraph (A) of paragraph (7). The court shall not order
23 involuntary administration of psychotropic medication under
24 subclause (III) of clause (i) unless the court has first found that the
25 defendant does not meet the criteria for involuntary administration
26 of psychotropic medication under subclause (I) of clause (i) and
27 does not meet the 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) A report made pursuant to paragraph (1) of subdivision (b)
16 shall include a description of antipsychotic medication administered
17 to the defendant and its effects and side effects, including effects
18 on the defendant's appearance or behavior that would affect the
19 defendant's ability to understand the nature of the criminal
20 proceedings or to assist counsel in the conduct of a defense in a
21 reasonable manner. During the time the defendant is confined in
22 a state hospital or other treatment facility or placed on outpatient
23 status, either the defendant or the people may request that the court
24 review any order made pursuant to this subdivision. The defendant,
25 to the same extent enjoyed by other patients in the state hospital
26 or other treatment facility, shall have the right to contact the
27 patients' rights advocate regarding his or her rights under this
28 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 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 (vii) If the administrative law judge upholds the certification
30 pursuant to clause (ii), the court may, for a period not to exceed
31 14 days, extend the certification and continue the hearing pursuant
32 to stipulation between the parties or upon a finding of good cause.
33 In determining good cause, the court may review the petition filed
34 with the court, the administrative law judge's order, and any
35 additional testimony needed by the court to determine if it is
36 appropriate to continue medication beyond the 21-day certification
37 and for a period of up to 14 days.

38 (viii) The district attorney, county counsel, or representative of
39 a facility where a defendant found incompetent to stand trial is
40 committed may petition the court for an order to administer

1 involuntary medication pursuant to the criteria set forth in
2 subclauses (II) and (III) of clause (i) of subparagraph (B). The
3 order is reviewable as provided in paragraph (7).

4 (3) When the court orders that the defendant be committed to
5 the State Department of State Hospitals or other public or private
6 treatment facility, the court shall provide copies of the following
7 documents prior to the admission of the defendant to the State
8 Department of State Hospitals or other treatment facility where
9 the defendant is to be committed:

10 (A) The commitment order, including a specification of the
11 charges.

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

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

17 (D) State summary criminal history information.

18 (E) Arrest reports prepared by the police department or other
19 law enforcement agency.

20 (F) Court-ordered psychiatric examination or evaluation reports.

21 (G) The community program director's placement
22 recommendation report.

23 (H) Records of a finding of mental incompetence pursuant to
24 this chapter arising out of a complaint charging a felony offense
25 specified in Section 290 or a pending Section 1368 proceeding
26 arising out of a charge of a Section 290 offense.

27 (I) Medical records.

28 (4) When the defendant is committed to a treatment facility
29 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
30 court makes the findings specified in clause (ii) or (iii) of
31 subparagraph (B) of paragraph (1) to assign the defendant to a
32 treatment facility other than a state hospital or other secure
33 treatment facility, the court shall order that notice be given to the
34 appropriate law enforcement agency or agencies having local
35 jurisdiction at the site of the placement facility of any finding of
36 mental incompetence pursuant to this chapter arising out of a
37 charge of a Section 290 offense.

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

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

25 Prior to making an order for transfer under this section, the court
26 shall notify the defendant, the attorney of record for the defendant,
27 the prosecuting attorney, and the community program director or
28 a designee.

29 (B) If the defendant is initially committed to the State
30 Department of State Hospitals or secure treatment facility pursuant
31 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
32 subsequently transferred to any other facility, copies of the
33 documents specified in paragraph (3) shall be taken with the
34 defendant to each subsequent facility to which the defendant is
35 transferred. The transferring facility shall also notify the appropriate
36 law enforcement agency or agencies having local jurisdiction at
37 the site of the new facility that the defendant is a person subject
38 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

39 (7) (A) An order by the court authorizing involuntary
40 medication of the defendant shall be valid for no more than one

1 year. The court shall review the order at the time of the review of
 2 the initial report and the six-month progress reports pursuant to
 3 paragraph (1) of subdivision (b) to determine if the grounds for
 4 the authorization remain. In the review, the court shall consider
 5 the reports of the treating psychiatrist or psychiatrists and the
 6 defendant's patients' rights advocate or attorney. The court may
 7 require testimony from the treating psychiatrist and the patients'
 8 rights advocate or attorney, if necessary. The court may continue
 9 the order authorizing involuntary medication for up to another six
 10 months, or vacate the order, or make any other appropriate order.

11 (B) Within 60 days before the expiration of the one-year
 12 involuntary medication order, the district attorney, county counsel,
 13 or representative of any facility where a defendant found
 14 incompetent to stand trial is committed may petition the committing
 15 court for a renewal, subject to the same conditions and
 16 requirements as in subparagraph (A). The petition shall include
 17 the basis for involuntary medication set forth in clause (i) of
 18 subparagraph (B) of paragraph (2). Notice of the petition shall be
 19 provided to the defendant, the defendant's attorney, and the district
 20 attorney. The court shall hear and determine whether the defendant
 21 continues to meet the criteria set forth in clause (i) of subparagraph
 22 (B) of paragraph (2). The hearing on any petition to renew an order
 23 for involuntary medication shall be conducted prior to the
 24 expiration of the current order.

25 (8) For purposes of subparagraph ~~(B)~~ (D) of paragraph (2) and
 26 ~~paragraphs (3) to paragraph (7), inclusive,~~ if the treating
 27 psychiatrist determines that there is a need, based on preserving
 28 his or her rapport with the patient or ~~to~~ preventing harm, the
 29 treating psychiatrist may request that the facility medical director
 30 designate another psychiatrist to act in the place of the treating
 31 ~~psychiatrist for purposes of this subdivision.~~ *psychiatrist*. If the
 32 medical director of the facility designates another psychiatrist to
 33 act pursuant to this paragraph, the treating psychiatrist shall brief
 34 the acting psychiatrist of the relevant facts of the case and the
 35 acting psychiatrist shall examine the patient prior to the hearing.

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

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

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

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

38 (i) Promptly notify and provide a copy of the report to the
39 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 pursuant to paragraph (1) concerning
7 the 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 of 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) A 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 term
36 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 a defendant is returned to the court pursuant to
2 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. 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) With the exception of proceedings alleging a violation of
34 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 action against the defendant is dismissed, the
7 defendant shall be released from commitment ordered under this
8 section, but without prejudice to the initiation of any proceedings
9 that may be appropriate under the Lanterman-Petris-Short Act
10 (Part 1 (commencing with Section 5000) of Division 5 of the
11 Welfare and Institutions Code).

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

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

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

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