

Introduced by Senator Stern

February 14, 2025

An act to amend Section 1370.01 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as introduced, Stern. Criminal procedure: competence to stand trial.

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 if the defendant is found incompetent to stand trial. Existing law, in the case of a misdemeanor charge in which the defendant is found incompetent, requires the court to hold a hearing to determine if the defendant is eligible for diversion within 30 days after the finding of incompetence. Under existing law, if the hearing is delayed beyond 30 days, the court is required to release the defendant on their own recognizance pending the hearing.

This bill would instead require that hearing to be held within 29 days and would require, if the hearing is delayed beyond 29 days, the court to release the defendant on their own recognizance pending the hearing.

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 1370.01 of the Penal Code is amended
2 to read:

1 1370.01. (a) If the defendant is found mentally competent, the
2 criminal process shall resume, and the trial on the offense charged
3 or hearing on the alleged violation shall proceed.

4 (b) (1) (A) If the defendant is found mentally incompetent, the
5 trial, judgment, or hearing on the alleged violation shall be
6 suspended and the court shall conduct a hearing, pursuant to
7 Chapter 2.8A (commencing with Section 1001.35) of Title 6, and,
8 if the court deems the defendant eligible, grant diversion pursuant
9 to Section 1001.36 for a period not to exceed one year from the
10 date the individual is accepted into diversion or the maximum term
11 of imprisonment provided by law for the most serious offense
12 charged in the misdemeanor complaint, whichever is shorter.

13 (B) Notwithstanding any other law, including Section 23640 of
14 the Vehicle Code, a misdemeanor offense for which a defendant
15 may be placed in a mental health diversion program in accordance
16 with this section includes a misdemeanor violation of Section
17 23152 or 23153 of the Vehicle Code. However, this section does
18 not limit the authority of the Department of Motor Vehicles to take
19 administrative action concerning the driving privileges of a person
20 arrested for a violation of Section 23152 or 23153 of the Vehicle
21 Code.

22 (2) The hearing shall be held no later than ~~30~~ 29 days after the
23 finding of incompetence. If the hearing is delayed beyond ~~30~~ 29
24 days, the court shall order the defendant to be released on their
25 own recognizance pending the hearing.

26 (3) If the defendant performs satisfactorily on diversion pursuant
27 to this section, at the end of the period of diversion, the court shall
28 dismiss the criminal charges that were the subject of the criminal
29 proceedings at the time of the initial diversion.

30 (4) If the court finds the defendant ineligible for diversion based
31 on the circumstances set forth in subdivision (b), (c), (d), or (g) of
32 Section 1001.36, the court shall, after notice to the defendant,
33 defense counsel, and the prosecution, hold a hearing to determine
34 which one of the following actions the court will take:

35 (A) Order modification of an existing mental health diversion
36 treatment plan in accordance with a recommendation from the
37 treatment provider.

38 (B) Refer the defendant to assisted outpatient treatment pursuant
39 to Section 5346 of the Welfare and Institutions Code. A referral
40 to assisted outpatient treatment may only occur in a county where

services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetency. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to assisted outpatient treatment, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of assisted outpatient treatment.

(C) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 30 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges shall be dismissed pursuant to Section 1385 90 days after the date of the filing of the petition, unless the defendant's case has been referred back to the court prior to the expiration of

1 that time period. This section does not alter the confidential nature
2 of conservatorship proceedings.

3 (D) Refer the defendant to the CARE program pursuant to
4 Section 5978 of the Welfare and Institutions Code. A hearing to
5 determine eligibility for CARE shall be held within 14 court days
6 after the date on which the petition for the referral is filed. If the
7 hearing is delayed beyond 14 court days, the court shall order the
8 defendant, if confined in county jail, to be released on their own
9 recognizance pending that hearing. If the defendant is accepted
10 into CARE, the charges shall be dismissed pursuant to Section
11 1385 six months after the date of the referral to CARE, unless the
12 defendant's case has been referred back to the court prior to the
13 expiration of that time period. This section does not alter the
14 confidential nature of CARE program proceedings.

15 (E) If the defendant does not qualify for services pursuant to
16 subparagraphs (A) to (D), inclusive, dismiss the charges.

17 (c) It is the intent of the Legislature that a defendant subject to
18 the terms of this section receive mental health treatment in a
19 treatment facility and not a jail. A term of four days will be deemed
20 to have been served for every two days spent in actual custody
21 against the maximum period of treatment pursuant to subparagraphs
22 (B) and (D) of paragraph (4) of subdivision (b) and subparagraph
23 (A) of paragraph (1) of subdivision (b), if applicable. A defendant
24 not in actual custody shall otherwise receive day for day credit
25 against the term of treatment from the date the defendant is
26 accepted into treatment in the event that the criminal charges have
27 not previously been dismissed. "Actual custody" has the same
28 meaning as in Section 4019.

29 (d) This section shall apply only as provided in subdivision (b)
30 of Section 1367.

31 (e) It is the intent of the Legislature that the court shall consider
32 all treatment options as provided in this section prior to dismissing
33 criminal charges. However, nothing in this section limits a court's
34 discretion pursuant to Section 1385.