

AMENDED IN SENATE MARCH 20, 2025

**SENATE BILL**

**No. 396**

---

---

**Introduced by Senator Stern**

February 14, 2025

---

---

~~An act to amend Section 1370.01 of the Penal Code, relating to criminal procedure. An act to add Section 1203.24 to the Penal Code, relating to corrections.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Stern. ~~Criminal procedure: competence to stand trial. Corrections: supervision.~~

*Existing law requires prisoners sentenced to imprisonment in the state prison to serve time on parole or community supervision after their release from prison. Existing law authorizes courts to suspend the imposition or execution of punishments in specified criminal cases and instead enforce terms of probation or mandatory supervision.*

*This bill would prohibit a supervision authority, as defined, from imposing a condition of supervision that prohibits a person on supervision from being in contact with any family member. The bill would authorize the supervision authority to prohibit contact if the family member is a victim of the crime for which the person on supervision was convicted, and it is deemed necessary for public safety. The bill would require the supervision authority prohibiting contact to provide a written explanation of why the public safety and rehabilitative benefits of prohibiting contact outweigh the rights to familial association, any rehabilitative benefits from contact, and any harms to either person from prohibiting contact. By increasing duties on local governments, this bill would impose a state-mandated local program.*

*The bill would exclude courts from the definition of a supervision authority.*

*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 the statutory provisions noted above.*

~~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 incompetency. 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~~ yes.  
State-mandated local program: ~~no~~ yes.

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

- 1     SECTION 1. Section 1203.24 is added to the Penal Code, to
- 2     read:
- 3     1203.24. (a) The Legislature finds and declares that family
- 4     connection is essential to successful reentry into the community
- 5     after incarceration.
- 6     (b) A supervision authority shall not impose a condition of
- 7     supervision that prohibits a person on supervision from being in
- 8     contact with any family member.
- 9     (c) Notwithstanding subdivision (b), if a family member is the
- 10    victim of the crime for which the person on supervision was
- 11    convicted, a supervision authority may prohibit contact between
- 12    the victim family member and a person on supervision if deemed

1 *necessary for public safety, even if the victim family member agrees*  
2 *to contact. If the victim family member agrees to contact and the*  
3 *supervision authority decides to prohibit contact, the supervision*  
4 *authority shall provide a written explanation of why the public*  
5 *safety and rehabilitative benefits of prohibiting contact outweigh*  
6 *rights to familial association, any rehabilitative benefits from*  
7 *contact, and any harms to either person from prohibiting contact.*  
8 *The supervising authority shall provide a copy of the written*  
9 *explanation to the person on supervision and to the family member.*

10 *(d) This section does not prohibit the issuance or enforcement*  
11 *of any criminal protective order or condition of supervision*  
12 *established by the court.*

13 *(e) For the purposes of this section, the following definitions*  
14 *apply:*

15 *(1) "Family member" means a person related to the person on*  
16 *supervision by blood, marriage, adoption, or other legally*  
17 *established family relationship, including, but not limited to, foster*  
18 *family members.*

19 *(2) "Supervision" means parole, probation, postrelease*  
20 *community supervision, mandatory supervision, or any other form*  
21 *of supervision. "Supervision" does not include incarceration in*  
22 *a county jail or state prison.*

23 *(3) "Supervision authority" means any state, county, or local*  
24 *government agency that imposes conditions of supervision on a*  
25 *person on supervision. "Supervision authority" does not include*  
26 *a court.*

27 *(4) "Victim" means the person who is the named victim in the*  
28 *charging document of an offense that ended in conviction in the*  
29 *current case for which the person is on supervision.*

30 *SEC. 2. If the Commission on State Mandates determines that*  
31 *this act contains costs mandated by the state, reimbursement to*  
32 *local agencies and school districts for those costs shall be made*  
33 *pursuant to Part 7 (commencing with Section 17500) of Division*  
34 *4 of Title 2 of the Government Code.*

35 ~~SECTION 1. Section 1370.01 of the Penal Code is amended~~  
36 ~~to read:~~

37 ~~1370.01. (a) If the defendant is found mentally competent, the~~  
38 ~~criminal process shall resume, and the trial on the offense charged~~  
39 ~~or hearing on the alleged violation shall proceed.~~

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

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

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

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

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

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

~~(B) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral 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~~

1 for assisted outpatient treatment shall be held within 45 days after  
2 the finding of incompetency. If the hearing is delayed beyond 45  
3 days, the court shall order the defendant, if confined in county jail,  
4 to be released on their own recognizance pending that hearing. If  
5 the defendant is accepted into assisted outpatient treatment, the  
6 charges shall be dismissed pursuant to Section 1385 six months  
7 after the date of the referral to assisted outpatient treatment, unless  
8 the defendant's case has been referred back to the court prior to  
9 the expiration of that time period. This section does not alter the  
10 confidential nature of assisted outpatient treatment.

11 (C) Refer the defendant to the county conservatorship  
12 investigator in the county of commitment for possible  
13 conservatorship proceedings for the defendant pursuant to Chapter  
14 3 (commencing with Section 5350) of Part 1 of Division 5 of the  
15 Welfare and Institutions Code. A defendant shall only be referred  
16 to the conservatorship investigator if, based on the opinion of a  
17 qualified mental health expert, the defendant appears to be gravely  
18 disabled, as defined in subparagraph (A) of paragraph (1) of  
19 subdivision (h) of Section 5008 of the Welfare and Institutions  
20 Code. Any hearings required in the conservatorship proceedings  
21 shall be held in the superior court in the county of commitment.  
22 The court shall transmit a copy of the order directing initiation of  
23 conservatorship proceedings to the county mental health director  
24 or the director's designee and shall notify the county mental health  
25 director or their designee of the outcome of the proceedings. Before  
26 establishing a conservatorship, the public guardian shall investigate  
27 all available alternatives to conservatorship pursuant to Section  
28 5354 of the Welfare and Institutions Code. If a petition is not filed  
29 within 30 days of the referral, the court shall order the defendant,  
30 if confined in county jail, to be released on their own recognizance  
31 pending conservatorship proceedings. If the outcome of the  
32 conservatorship proceedings results in the filing of a petition for  
33 the establishment of a temporary or permanent conservatorship,  
34 the charges shall be dismissed pursuant to Section 1385 90 days  
35 after the date of the filing of the petition, unless the defendant's  
36 case has been referred back to the court prior to the expiration of  
37 that time period. This section does not alter the confidential nature  
38 of conservatorship proceedings.

39 (D) Refer the defendant to the CARE program pursuant to  
40 Section 5978 of the Welfare and Institutions Code. A hearing to

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

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

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

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

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