

Introduced by Senator Stern

February 21, 2025

An act to *amend Section 4011.6 of, and to add Section 2603.5 to to,* the Penal Code, relating to county jail inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as amended, Stern. Inmates: ~~psychiatric medication: administration.~~ *mental health.*

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. 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. Existing law requires, if the defendant is not eligible for diversion, the court to hold a hearing to determine whether the defendant will be referred to outpatient treatment, conservatorship, or the CARE program, or if the defendant's treatment plan will be modified. Existing law requires the court to dismiss the case if a defendant does not qualify for the above-described services.

Existing law prohibits, except as specified, a person confined in a county jail from being administered any psychiatric medication without prior informed consent. Existing law authorizes a county department of mental health, or other designated county department, to involuntarily administer psychiatric medication to an inmate on a nonemergency basis only after the inmate is provided, among other things, a hearing before a superior court judge, a court-appointed commissioner or referee,

or a court-appointed hearing officer. Existing law also provides for the involuntary administration of psychiatric medication to an inmate in an emergency situation. Existing law limits the duration during which an inmate can be involuntarily administered psychiatric medication on an emergency basis and requires that, except as specified, the inmate be provided the same due process protections they would be entitled to when psychiatric medication is involuntarily administered on a nonemergency basis. Existing law specifies that an emergency exists for these purposes when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others and it is impractical, due to the seriousness of the emergency, to first obtain informed consent.

This bill would, if ~~a defendant~~ *an individual* has been found incompetent to stand trial after having been charged with a misdemeanor, additionally authorize ~~a psychiatrist to administer psychiatric~~ *the administration of antipsychotic* medication to the ~~defendant~~ *individual* without their *prior* informed consent on an emergency basis when treatment is ~~immediately necessary for the preservation of life or the prevention of serious bodily harm and it is impracticable to first gain consent.~~ *necessary to address the emergency condition and the medication is administered in the least restrictive manner, as specified.* The bill would specify that a determination made pursuant to these provisions is valid for ~~one year after the date of the initial determination of the emergency, 90 days after the date the defendant is referred to one of the programs described above, or upon order of any court with jurisdiction over the defendant, whichever occurs first.~~ The bill would also authorize a psychiatrist to involuntarily administer psychiatric medication to those defendants upon a court's determination that the defendant does not have the capacity to refuse treatment and is gravely disabled on the basis that they, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, are unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care. The bill would establish ~~various procedures to be followed when psychiatric medication is involuntarily administered pursuant to these provisions:~~ *up to 72 hours if the medication is necessary to address the emergency condition, except as provided.* The bill would require the court, prior to issuing an involuntary medication order after hearing, to find by clear and

convincing evidence that, among other things, a psychiatrist or psychologist has determined that the individual has a serious mental health disorder that can be treated with antipsychotic medication, and there is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best interest. The bill would also enumerate certain rights for individuals, prior to the administration of involuntary medication pursuant to these provisions.

Existing law provides that if a person in charge of a county jail, city jail, or juvenile detention facility, or a judge, as specified, believes that a person in custody may have a mental health disorder, that person or judge may cause the prisoner to be taken to a facility for 72 hours of treatment and evaluation.

The bill would prohibit certain factors, including the person's temporary access to food, clothing, and shelter, while transferred to a 72-hour facility for treatment and evaluation, from being a basis to conclude that the person is able to provide for their basic personal needs.

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 2603.5 is added to the Penal Code, to
2 read:
3 2603.5. (a) Notwithstanding Section 2603, if ~~a defendant an~~
4 ~~individual~~ has been found incompetent to stand trial after having
5 been charged with a misdemeanor offense, as described in Section
6 1370.01, ~~a psychiatrist may administer psychiatric medication~~
7 ~~without the defendant's informed consent in either of the following~~
8 ~~circumstances; and is confined in the county jail, antipsychotic~~
9 ~~medication may be administered without their prior informed~~
10 ~~consent only in the following circumstances:~~
11 ~~(a)-(1)~~
12 (1) An emergency, as defined by either subdivision (m) of
13 Section 5008 of the Welfare and Institutions Code or subdivision
14 (d) of Section ~~2602~~ 2603 of the Penal Code. ~~The facility shall file~~
15 ~~with the Office of Administrative Hearings, and serve on the~~
16 ~~defendant and their counsel, the written notice described in~~
17 ~~paragraph (7) of subdivision (c) of Section 2602 within 72 hours~~

1 after commencing medication pursuant to this subdivision, unless
2 either of the following occurs:

3 (A) The defendant gives informed consent to continue the
4 medication.

5 (B) A psychiatrist determines that the psychiatric medication
6 is not necessary and administration of the medication is
7 discontinued.

8 (2) An order made pursuant to this paragraph is subject to the
9 limitations set forth in paragraphs (2) and (3) of subdivision (d)
10 of Section 2602.

11 (3) A determination that the defendant may receive involuntary
12 medication remains valid for one of the following periods,
13 whichever occurs first:

14 (A) One year after the date of the initial determination of the
15 emergency.

16 (B) Ninety days after the date when the defendant is referred to
17 a program described in paragraph (4) of subdivision (b) of Section
18 1370.01.

19 (C) Upon order of any court with jurisdiction over the defendant
20 including pursuant to a program described in paragraph (4) of
21 subdivision (b) of Section 1370.01.

22 (A) *In the case of an emergency, antipsychotic medication may,*
23 *despite the individual's objection, be administered before a*
24 *capacity hearing if the medication is necessary to address the*
25 *emergency condition and is administered in the least restrictive*
26 *manner, only for the duration of the emergency, and in no case*
27 *for more than 72 hours, except as provided by subparagraph (B).*

28 (B) *If a psychiatrist determines that continued administration*
29 *of antipsychotic medication is necessary beyond the initial 72*
30 *hours and the individual does not consent to take the medication*
31 *voluntarily, the psychiatrist may petition the superior court in the*
32 *county where the individual is confined to order continued*
33 *treatment with antipsychotic medication. The petition and a written*
34 *notice, as described in paragraph (1) of subdivision (b), shall be*
35 *filed within the initial 72-hour period that the antipsychotic*
36 *medication is administered and served on the individual and their*
37 *counsel.*

38 ~~(b) (1)~~

39 (2) (A) Upon a court's determination that the ~~defendant~~
40 *individual* is gravely disabled, as defined in subparagraph (A) of

paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, and that the ~~defendant~~ *individual* does not have the capacity to *consent to or* refuse treatment with ~~psychiatric~~ *antipsychotic* medication. ~~For purposes of this paragraph, the~~ *The* fact that a ~~defendant~~ *an individual* has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated ~~does not constitute evidence~~ *is not a basis to conclude* that the ~~defendant~~ *individual* is able to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care, which shall be evaluated based upon the ~~defendant's~~ *individual's* ability to provide for those needs while not incarcerated. *The court shall consider opinions in the reports prepared pursuant to subdivision (b) of Section 1369, as applicable to the issue of whether the individual lacks the capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:*

(i) *The court shall conduct a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified in subdivision (c) of Section 5334 of the Welfare and Institutions Code, to determine whether any of the following is true:*

(I) *Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the individual lacks the capacity to make decisions regarding antipsychotic medication, the individual's mental disorder requires medical treatment with antipsychotic medication, and, if the individual's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the individual will result. Probability of serious harm to the physical or mental health of the individual requires evidence that the individual is presently suffering adverse effects to their physical or mental health, or the individual has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that an individual has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the individual.*

(II) *Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the individual is a danger to others, in that the*

1 individual has inflicted, attempted to inflict, or made a serious
2 threat of inflicting substantial physical harm on another while in
3 custody, or the individual had inflicted, attempted to inflict, or
4 made a serious threat of inflicting substantial physical harm on
5 another that resulted in the individual being taken into custody,
6 and the individual presents, as a result of mental disorder or mental
7 defect, a danger of inflicting substantial physical harm to others.

8 (ii) (I) If the court finds the conditions described in subclause
9 (I) or (II) of clause (i) to be true, and has considered the conditions
10 in subdivision (c), and if, pursuant to the opinion offered to the
11 court pursuant to subdivision (b) of Section 1369, a psychiatrist
12 has opined that treatment with antipsychotic medication may be
13 appropriate for the individual, the court may issue an order
14 authorizing the administration of antipsychotic medication as
15 needed, including on an involuntary basis, to be administered
16 under the direction and supervision of a licensed psychiatrist.

17 (II) If the court finds the conditions described in subclause (I)
18 or (II) of clause (i) to be true, and if, pursuant to the opinion
19 offered to the court pursuant to subdivision (b) of Section 1369, a
20 licensed psychologist has opined that treatment with antipsychotic
21 medication may be appropriate for the individual, the court may
22 issue an order authorizing treatment by a licensed psychiatrist on
23 an involuntary basis. That treatment may include the
24 administration of antipsychotic medication, as needed, to be
25 administered under the direction and supervision of a licensed
26 psychiatrist.

27 (B) A hearing pursuant to this section may occur at the same
28 time as the competency hearing held pursuant to Section 1369.

29 (b) Before an order authorizing the administration of involuntary
30 medication is issued pursuant to this section, the person shall have
31 the following rights:

32 (1) To receive written notice of the diagnosis, the factual basis
33 for the diagnosis, the expected benefits of the medication, any
34 potential side effects and risks of the medication, and any
35 alternatives to treatment with the medication.

36 (2) To be represented by counsel at all stages of the proceedings.

37 (3) To receive timely access to their medical records and files.

38 (4) To be present at all stages of the proceedings.

39 (5) To present evidence and cross-examine witnesses.

1 (c) After hearing, involuntary medication may be administered
2 if the court finds by clear and convincing evidence that all of the
3 following conditions are met:

4 (1) A psychiatrist or psychologist has determined that the
5 individual has a serious mental health disorder that can be treated
6 with antipsychotic medication.

7 (2) A psychiatrist or psychologist has determined that, as a
8 result of that mental health disorder, the individual is gravely
9 disabled and lacks the capacity to consent to, or refuse treatment
10 with, antipsychotic medications.

11 (3) That serious harm to the physical or mental health of the
12 individual is likely to result absent treatment with antipsychotic
13 medication.

14 (4) A psychiatrist has prescribed one or more antipsychotic
15 medications for the treatment of the individual's disorder, has
16 considered the risk, benefits, and treatment alternatives to
17 involuntary medication, and has determined that the treatment
18 alternatives to involuntary medication are unlikely to meet the
19 needs of the individual.

20 (5) The individual has been advised of the expected benefits of
21 any potential side effects and risks to the individual, any
22 alternatives to treatment with antipsychotic medication, and
23 refuses, or is unable to consent to, the administration of the
24 medication.

25 (6) The jail has made a documented attempt to locate an
26 available bed for the individual in a community-based treatment
27 facility in lieu of seeking to administer involuntary medication. If
28 a community-based alternative is not available, medication shall
29 only be administered by noncustody, health care staff and
30 individuals will be monitored at least every 15 minutes for at least
31 one hour after administration of medication.

32 (7) There is no less intrusive alternative to the involuntary
33 administration of antipsychotic medication, and involuntary
34 administration of the medication is in the individual's best medical
35 interest.

36 (d) The individual's confinement shall not be extended to provide
37 treatment to the individual with antipsychotic medication pursuant
38 to this section. An order pursuant to this section shall be valid
39 until the first of the following events occurs:

1 (1) *Ninety days from the date the individual is found incompetent*
2 *to stand trial pursuant to Section 1370.01.*

3 (2) *Ninety days after the date when the individual is referred to*
4 *a program described in paragraph (4) of subdivision (b) of Section*
5 *1370.01.*

6 (3) *Upon order of any court with jurisdiction over the individual,*
7 *including pursuant to a program described in paragraph (4) of*
8 *subdivision (b) of Section 1370.01.*

9 (4) *The individual is released from custody in the county jail.*

10 ~~(2) A person~~

11 (e) *An individual* who is subject to an order made pursuant to
12 this subdivision has the legal and civil rights set forth in Article 7
13 (commencing with Section 5325) of Chapter 2 of Part 1 of Division
14 5 of the Welfare and Institutions Code.

15 (f) *This section does not preclude an individual from filing a*
16 *petition for habeas corpus to challenge the continuing validity of*
17 *an order authorizing the administration of antipsychotic*
18 *medication.*

19 SEC. 2. *Section 4011.6 of the Penal Code is amended to read:*

20 4011.6. (a) (1) If it appears to the person in charge of a county
21 jail, city jail, or juvenile detention facility, or to any judge of a
22 court in the county in which the jail or juvenile detention facility
23 is located, that a person in custody in that jail or juvenile detention
24 facility may have a mental health disorder, that person or judge
25 may cause the prisoner to be taken to a facility for 72-hour
26 treatment and evaluation pursuant to Section 5150 of the Welfare
27 and Institutions Code and shall inform the facility in writing, which
28 shall be confidential, of the reasons that the person is being taken
29 to the facility. The local mental health director or the director's
30 designee may examine the prisoner prior to transfer to a facility
31 for treatment and evaluation. Upon transfer to a facility, Article 1
32 (commencing with Section 5150), Article 4 (commencing with
33 Section 5250), Article 4.5 (commencing with Section 5260), Article
34 5 (commencing with Section 5275), Article 6 (commencing with
35 Section 5300), and Article 7 (commencing with Section 5325) of
36 Chapter 2 and Chapter 3 (commencing with Section 5350) of Part
37 1 of Division 5 of the Welfare and Institutions Code apply to the
38 prisoner.

39 ~~(b)~~

1 (2) If the court causes the prisoner to be transferred to a 72-hour
2 facility, the court shall immediately notify the local mental health
3 director or the director's designee, the prosecuting attorney, and
4 counsel for the prisoner in the criminal or juvenile proceedings
5 about that transfer. Where the person in charge of the jail or
6 juvenile detention facility causes the transfer of the prisoner to a
7 72-hour facility, the person shall immediately notify the local
8 mental health director or the director's designee and each court
9 within the county where the prisoner has a pending proceeding
10 about the transfer. Upon notification by the person in charge of
11 the jail or juvenile detention facility, the court shall immediately
12 notify counsel for the prisoner and the prosecuting attorney in the
13 criminal or juvenile proceedings about that transfer.

14 (3) *When a person in custody is transferred from a jail to a*
15 *72-hour facility for treatment and evaluation pursuant to this*
16 *subdivision, the fact that the person has temporary access to food,*
17 *clothing, shelter, personal safety, and necessary medical care*
18 *while incarcerated is not a basis to conclude that the person is*
19 *able to provide for their basic personal needs, which shall be*
20 *evaluated based upon the person's ability to provide for those*
21 *needs outside the jail setting.*

22 (e)

23 (b) If a prisoner is detained in, or remanded to, a facility pursuant
24 to the articles of the Welfare and Institutions Code listed in
25 subdivision (a), the facility shall transmit a report, which shall be
26 confidential, to the person in charge of the jail or juvenile detention
27 facility or judge of the court who caused the prisoner to be taken
28 to the facility and to the local mental health director or the
29 director's designee, concerning the condition of the prisoner. A
30 new report shall be transmitted at the end of each period of
31 confinement provided for in those articles, upon conversion to
32 voluntary status, and upon filing of temporary letters of
33 conservatorship.

34 (d)

35 (c) A prisoner who has been transferred to an inpatient facility
36 pursuant to this section may convert to voluntary inpatient status
37 without obtaining the consent of the court, the person in charge of
38 the jail or juvenile detention facility, or the local mental health
39 director. At the beginning of that conversion to voluntary status,
40 the person in charge of the facility shall transmit a report to the

1 person in charge of the jail or juvenile detention facility or judge
2 of the court who caused the prisoner to be taken to the facility,
3 counsel for the prisoner, prosecuting attorney, and local mental
4 health director or the director's designee.

5 ~~(e)~~

6 (d) If the prisoner is detained in, or remanded to, a facility
7 pursuant to the articles of the Welfare and Institutions Code listed
8 in subdivision (a), the time passed in the facility shall count as part
9 of the prisoner's sentence. When the prisoner is detained in, or
10 remanded to, the facility, the person in charge of the jail or juvenile
11 detention facility shall advise the professional person in charge of
12 the facility of the expiration date of the prisoner's sentence. If the
13 prisoner is to be released from the facility before the expiration
14 date, the professional person in charge shall notify the local mental
15 health director or the director's designee, counsel for the prisoner,
16 the prosecuting attorney, and the person in charge of the jail or
17 juvenile detention facility, who shall send for, take, and receive
18 the prisoner back into the jail or juvenile detention facility.

19 ~~(f)~~

20 (e) A defendant, either charged with or convicted of a criminal
21 offense, or a minor alleged to be within the jurisdiction of the
22 juvenile court, may be concurrently subject to the
23 Lanterman-Petris-Short Act (Part 1 (commencing with Section
24 5000) of Division 5 of the Welfare and Institutions Code).

25 ~~(g)~~

26 (f) If a prisoner is detained in a facility pursuant to the articles
27 of the Welfare and Institutions Code listed in subdivision (a), and
28 if the person in charge of the facility determines that arraignment
29 or trial would be detrimental to the well-being of the prisoner, the
30 time spent in the facility shall not be computed in any statutory
31 time requirements for arraignment or trial in any pending criminal
32 or juvenile proceedings. This section shall not affect any statutory
33 time requirements for arraignment or trial in any pending criminal
34 or juvenile proceedings.

35 ~~(h)~~

36 (g) For purposes of this section, the term "juvenile detention
37 facility" includes any state, county, or private home or institution

- 1 in which wards or dependent children of the juvenile court or
- 2 persons awaiting a hearing before the juvenile court are detained.

O