SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1187	**Hearing Date:**	March 20, 2018
Author:	Beall		
Version:	February 15, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Competence to Stand Trial***

HISTORY

Source: California Public Defenders Association

Prior Legislation: SB 684 (Bates), Chapter 246, Statutes of 2017
AB 103 (Committee on Budget), Chapter 17, 2017
AB 720 (Eggman), Chapter 347, Statutes of 2017
SB 1412 (Nielsen), Chapter 759, Statutes of 2014
AB 2625 (Achadjian), Chapter 742, Statutes of 2014
AB 2190 (Maienschein), Chapter 734, Statutes of 2014
AB 2186 (Lowenthal), Chapter 733, Statutes of 2014
AB 1907 (Lowenthal), Chapter 814, Statutes of 2012

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to reduce the maximum term of commitment to a treatment facility to restore competency and to conform the procedures on involuntary medication of persons who are found incompetent to stand trial (IST) with the procedures allowing involuntary medication of county jail inmates.

Existing law states that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a).)

Existing law requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is IST. (Pen. Code § 1368, subd. (b).)

Existing law provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code § 1368, subd. (c).)

Existing law specifies how the trial on the issue of mental competency shall proceed. (Pen. Code § 1369.)

Existing law provides that if the defendant is found mentally competent, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent. (Pen. Code §1370, subd. (a).)

Existing law requires the court, if the defendant is found IST, to order the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, any other available public or private treatment facility that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, as specified. (Pen. Code § 1370, subd. (a)(1)(B)(i).)

Existing law states when the court orders a defendant to be committed to the Department of State Hospitals, the court must provide specified information prior to admission including a computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment. (Pen. Code § 1370, subd. (a)(3)(C).)

Existing law requires a medical director of the state hospital or other treatment facility to which the defendant is confined, or the outpatient treatment staff if the defendant is on outpatient status, to make a written report to the court and the community program director for the county or region of commitment concerning the defendant's progress toward recovery of mental competence within 90 days of the order of commitment, or placement on outpatient status, made pursuant to the above provisions and at 6-month intervals thereafter or until the defendant becomes mentally competent. A copy of these reports shall be provided to the prosecutor and defense attorney by the court. (Pen. Code § 1370, subd. (b)(1).)

Existing law requires the committing court to order the defendant to be returned to the court for conservatorship proceedings, as specified, if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future. (Pen. Code § 1370, subd. (b)(1).)

Existing law requires a defendant who has not recovered mental competence to be returned to the committing court within 90 days prior to the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment for violation of probation or mandatory supervision, whichever is shorter. (Pen. Code § 1370, subd. (c)(1).)

This bill states that a person who is found to be IST shall be committed to the custody of the Department of State Hospitals for a period not to exceed the shorter of either two years from the date of the commitment order, or the maximum term of imprisonment for the most serious offense charged.

This bill requires the court to direct the community program director to provide a written recommendation as to whether the person will be placed in a state hospital, jail-based treatment facility, outpatient treatment, or other residential facility. The court shall set a hearing within 18 judicial days from the commitment order to receive the placement recommendation.

This bill provides that if the community program director believes the person is unlikely to be restored to competency in the foreseeable future, the community program director shall inform the court and notify the conservatorship investigator in the county of commitment.

This bill defines "community program director" to mean "the person designated by the Department of State Hospitals for the county or region, or his or her designee.

This bill requires within 90 days of the commitment order, and at six-month intervals thereafter, the director of the treatment facility at which the person is placed to make a written report to the court and the community program director concerning the committed person's progress toward recovery of mental competence, including an opinion as to whether a substantial likelihood exists that the committed person will attain competence in the foreseeable future.

Existing law authorizes a court to issue an order authorizing involuntary antipsychotic medication as prescribed by the defendant's treating psychiatrist at any facility housing the defendant when certain conditions are met. (Pen. Code, § 1370, subd. (a)(2)(B).)

Existing law states that involuntary medication order issued as part of IST proceedings may be valid for up to one year, but must be reviewed in the initial report and the six month progress reports, and may be continued for up to six months. (Pen. Code, § 1370, subd. (a)(7)(A).)

Existing law specifies procedures following a finding that a defendant is IST for misdemeanor offenses. (Pen. Code, § 1370.01.)

Existing law specifies procedures following a finding that a defendant is mentally incompetent and is developmentally disabled. (Pen. Code, § 1370.1.)

This bill makes conforming changes to the competency procedures in Penal Code sections 1370.01 and 1370.1.

Existing law specifies procedures following competency findings during postrelease supervision or parole revocation hearings. (Pen. Code, § 1370.02.)

Existing law provides that if the parolee is ordered to undergo treatment and is not restored to competency within the maximum period of confinement and the court dismisses the revocation, the court shall return the parolee to parole supervision.

This bill provides that the parolee's treatment shall not exceed two years or the amount of time during which the person would otherwise remain subject to parole supervision, whichever is less.

This bill clarifies that commitment to treatment does not toll the running of the period of parole or serve as a basis for extending the person's maximum discharge date.

Existing law specifies procedures for the involuntary medication of inmates confined in county jail. (Pen. Code, § 2603.)

This bill conforms the involuntary medication procedures specified in sections relating to competency proceedings with the procedures specified for inmates confined in county jail and clarifies that psychotropic medications provided in a treatment facility that is not a county jail are subject to existing laws authorizing medication for persons who are civilly committed.

Existing law specifies the time credits for inmates confined in or committed to a county jail, industrial farm, road camp, or a city jail. (Pen. Code, § 4109.)

This bill applies those credits to person who are committed to a facility pending the return of mental competence.

This bill makes other conforming changes.

COMMENTS

1. Need for this Bill

According to the author:

> The number of incompetent defendants being treated in California's state hospitals, developmental centers, and, more recently, county jails has increased steadily over recent decades. Due to funding and resource deficits, state agencies have been unable to keep up with this growth. Wait lists for placement in state-operated treatment facilities continue to grow, impacting the operation of county jails and infringing on speedy trial rights of defendants and crime victims. In addition to increasing incentives and providing programs to divert mentally ill and/or developmentally disabled persons charged with misdemeanors and nonserious, nonviolent felony offenses from the criminal justice system, there is an urgent need to reform California's competency commitment scheme to ensure that state resources are used wisely, fairly, and in accordance with constitutional guarantees of equal protection and due process.
>
> California's competency commitment scheme has existed since 1872. In 1974, pertinent statutes were amended to limit the maximum permissible time period for a competency commitment to 3 years, then-believed to be the constitutionally allowable maximum "reasonable period of time," either for restoring a person to competency, or for determining that he or she is not restorable. But, as recognized by commentators and California appellate courts since 1993, this 3 year time period is actually not "reasonable". Over the past half-century, medication-treatment of severely mentally ill individuals has advanced, competency restoration treatment programs have been shown to have consistently high success rates, and we have learned that committed persons attain competency in time periods far shorter than what was considered "reasonable" in 1974. Studies show that the vast majority (80-90%) becomes trial-competent within six months of starting treatment, and nearly all who attain competency do so within a year. Those not restored within a year are believed to be unrestorable.
>
> SB 1187 redefines the "rule of reasonableness" in a manner consistent with modern medical science, permitting the involuntary pre-trial involuntary confinement of a person, solely based on his or her mental incapacity to stand trial, for no longer than two years. By shortening the maximum commitment period, this bill would increase the availability of placements in residential treatment facilities, hospitals, and developmental centers for the treatment of

individuals who are incompetent to stand trial. Additionally, by shortening the maximum time period before an unrestored mentally incompetent defendant must be released, the bill would accelerate local government's existing duty to provide appropriate community-based mental health care and supportive services and, in some cases, conservatorship over the person.

This bill clarifies existing duties of the court and the parties to competency proceedings, modernizes antiquated language, and brings California's competency scheme in line with recent legislative reforms.

This bill mandates equal credits-earning by committed incompetent persons who are detained in county jail facilities.

This bill mandates equal treatment of incompetent persons under Probation's supervision, requiring that the mental health needs of all such individuals be addressed by local government agencies and collaborative courts, rather than by commitments to state hospitals, developmental centers, other secure treatment facilities.

2. Mental Competency and Effect of this Legislation

The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if an offender has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code § 1367.) If after an examination and hearing the defendant is found IST, the defendant is referred to the Department of State Hospitals or other treatment facility and the criminal proceedings are suspended. (Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The treating agency shall submit reports to the court periodically on the offender' status. The initial report must be made within 90 days of the offender's commitment. (Pen. Code § 1370, subd. (b)(1).) A defendant who is committed to a state hospital or other treatment facility after being found IST may be committed for no more than three years from the date of commitment. (Pen Code §1370, subd. (c).) If the defendant has not recovered mental competence by the end of the three year period, and the medical staff reports that the defendant is not likely to regain competency in the foreseeable future, then the defendant must be returned to the committing court where a conservatorship may be ordered. (Penal Code Section 1370, subd. (c)(2).)

This bill makes several changes to the laws governing procedures following a finding of IST. The bill changes the maximum commitment term for a felony from three years to two years. This timeframe would start from the date of the commitment order as opposed to the date of commitment. The existing three year time limit was added address constitutional issues because prior to the three year time limit there was no time limit:

> The three-year limit was added to section 1370 in 1974 when the Legislature passed Assembly Bill No. 1529, authored by Assemblyman Frank Murphy. (Parker, *California's New Scheme for the Commitment of Individuals Found Incompetent to Stand Trial* (1975) 6 Pacific L.J. 484, 489.) The purpose of the legislation was to bring the procedure for the commitment of mentally incompetent defendants in accord with the decision of the California Supreme Court in *In re Davis* (1973) 8 Cal. 3d 798 [106 Cal. Rptr. 178, 505

> P.2d 1018]. (Stats. 1974, ch. 1511, § 16, p. 3323.) Before 1974, a criminal defendant found mentally incompetent to stand trial in California was committed to a state hospital until he regained competence and thus faced the possibility of an indefinite commitment without regard to the crime with which he was charged or his prognosis for recovery of competence. (*Conservatorship of Hofferber* (1980) 28 Cal. 3d 161, 167 [167 Cal. Rptr. 854, 616 P.2d 836].)
>
> In *In re Davis*, *supra*, 8 Cal. 3d 798, the California Supreme Court reviewed the law governing commitment of defendants found incompetent to stand trial pursuant to section 1367 et seq. in light of the decision by the United States Supreme Court in *Jackson v. Indiana* (1972) 406 U.S. 715 [92 S. Ct. 1845, 32 L. Ed. 2d 435] (*Jackson*), which struck similar Indiana provisions on grounds that they denied equal protection and due process. In Jackson, a defendant found incompetent to stand trial could be committed and confined until he regained his competence, a standard not necessarily related to his need for care or treatment. Since pendency of unproved criminal charges was not a reasonable basis for distinction among mentally ill persons, Indiana law was found to deny incompetent criminal defendants equal protection. (*Jackson*, *supra*, 406 U.S. at pp. 729-730 [92 S. Ct. at pp. 1853-1854].) The Indiana procedures also denied due process because, solely for incompetence, they permitted confinement beyond a period reasonably related to the aims of commitment. (*Id*. at p. 738 [92 S. Ct. at p. 1858].) *Jackson* adopted a rule of reasonableness, requiring that a person charged with a criminal offense, who is committed on account of his incompetence to stand trial, may not be held more than the reasonable period of time necessary to determine whether there is a substantial probability that competency will be restored. If there is no substantial probability the defendant will regain competence, the state must justify further confinement by showing that it is necessary on some ground applicable to all mentally ill persons. (*Ibid*.)
>
> In *In re Davis*, the California Supreme Court found that the California procedures suffered from the same constitutional defects as those of Indiana. The court adopted the rule of *Jackson* that no person charged with a criminal offense and committed to a state hospital solely on account of his incapacity to proceed to trial may be so confined more than a reasonable period of time necessary to determine whether there is a substantial likelihood that he will recover that capacity in the foreseeable future. Unless a showing of probable recovery is made within a reasonable period, the defendant must either be released or recommitted under alternative commitment procedures. (*In re Davis*, *supra*, 8 Cal.3d at p. 801.)

(*In re Polk* (1999), 71 Cal.App.4th 1230, 1235-1236.)

According to information provided by the sponsor of this bill, the majority of states have maximum competency commitments significantly shorter than California's 3-year term. (*When Treatment is Punishment: The effects of Maryland's incompetency to stand trial policies and practices*. Justice Policy Institute (Oct. 2011); see factsheet on national comparison at <http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_when_treatment_is_punishment_national_factsheet.pdf> [as of Mar. 14, 2018].)

The bill also allows a conservatorship to be initiated once the defendant has been referred to community program director who is responsible for providing a written recommendation as to the person's placement. If the community program director believes the person is unlikely to be

restored to competency in the foreseeable future, the community program director is required to inform the court and notify the investigator in the county of commitment.

This bill makes conforming changes to code sections that specify procedures following competency findings for persons charged with misdemeanors or found to be developmentally disabled. This bill also conforms the process by which a court may issue an involuntary medication order through competency hearings with the process for involuntarily medicating inmates confined in county jail.

This bill also applies the same credits that are received by inmates in county jails, city jails, industrial farms, or road camps to persons who are committed to a facility pending restoration of mental competence.

3. Involuntary Medication Procedures for Inmates Awaiting Trial or Sentencing

County jails house inmates that have been through the criminal process and have been sentenced to county jails, but they also house individuals who are detained in jail while they face criminal charges. Prior to the enactment of AB 720 (Eggman), Chapter 347, Statutes of 2017, procedures for involuntary medication only applied to the portion of the county jail population that had been sentenced. Prior to the enactment of that law, the only statutory authority for involuntarily medicating this group of persons was on an emergency basis or as ordered through a court as part of IST proceedings.

AB 720 generally provided that inmates confined in a county jail, which includes both pretrial and sentenced inmates, shall not be administered any psychiatric medication without the inmate's prior informed consent. However, if it is determined that an inmate does not have the capacity to consent to medication or is a danger to him or herself or others if not medicated and there is no less intrusive alternative to involuntary medication and the medication is in the inmate's best interest, the court may issue an involuntary medication order that is valid for no more than 180 days. The order must be reviewed at intervals of not more than 60 days to determine whether the grounds for the order remain. The order may be terminated or modified if there is a showing that the medication is interfering with the inmate's due process rights in the criminal proceeding. A renewal order may be issued that is valid for no longer than 180 days. The court may suspend all proceedings in the criminal prosecution until the court determines that the medication will not interfere with the defendant's ability to meaningfully participate in criminal proceedings.

When this committee considered AB 720, Judicial Council expressed concerns about creating two separate tracks where a court can issue an involuntary medication order in a criminal case and potential conflicts. This bill provides that when involuntary medication is believed to be necessary for someone who has been found incompetent, notification shall be provided to the court and the sheriff's department to request an evaluation pursuant to the procedures enacted by AB 720.

4. Argument in Support

According to the California Public Defenders Association, the sponsor of this bill:

> For nearly half a century, California has operated under the assumption that 3 years is a "reasonable period of time" either to restore a person who is charged

with a felony to competency or to determine that he or she cannot be restored in the foreseeable future. But, as recognized by commentators, California appellate courts, and other state's legislatures, this maximum time period is not actually "reasonable" and, in reality, is simply a way of assuring that incompetent defendants, while unable to assert their trial rights and test the State's evidence in a meaningful way, are "punished sufficiently for their crimes." (Fn.)

Due to advances in both neuro-science and mental health practices in the last 50 years, medication-treatment of severely mentally ill individuals has improved, competency restoration treatment programs have been shown to have consistently high success rates, and we have learned that committed persons attain competency in time periods far shorter than what was considered "reasonable" in 1974. Studies who that the vast majority (80-90%) become trial-competent within six months of starting treatment, and nearly all who attain competency do so within a year. Those who are not restored within a year are believed to be unrestorable, requiring long-term mental health care and supportive services and, in some cases, conservatorship.

. . . .

SB 1187 also clarifies existing duties of the court, counsel, and government agencies in competency proceedings, streamlines inefficient processes, modernizes antiquated language, and corrects unjustifiable disparities in the treatment of similarly situated classes of criminal defendants. Finally, SB 1187 is in line with California's realignment philosophy. The bill supports the State Department of State Hospital's centralization of placement determinations but requires, ultimately, that the long-term mental health needs of those who are not restored to competency in a reasonable period of time be addressed by local government.

-- END –