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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 1323                      **Hearing Date:** April 9, 2024  
**Author:** Menjivar  
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**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal procedure: competence to stand trial*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 1584 (Weber), held in Sen. Approps., 2023  
AB 1640 (Weber), held on suspense in Sen. Approps. Comm., 2022  
SB 1223 (Becker), Ch. 735, Stats. 2022  
SB 184 (Committee on Budget), Ch. 47, Stats. 2022  
SB 317 (Stern), Chapter 599, Statutes of 2021  
SB 215 (Beall), Ch. 1005, Stats. 2018  
AB 1810 (Committee on Budget), Ch. 34, Stats. 2018  
SB 8 (Beall), held on Suspense File in Assem. Appropriations, 2017

**Support:** ACLU California Action; California Alliance for Youth and Community Justice; California Association of Social Rehabilitation Agencies; California Public Defenders Association; Californians for Safety and Justice; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice (CURYJ); Critical Resistance, Los Angeles; Disability Rights California; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; LA Defensa; Rubicon Programs; San Francisco Public Defender; Smart Justice California; Steinberg Institute; Young Women's Freedom Center

**Opposition:** California District Attorneys Association

## PURPOSE

*The purpose of this bill is to makes changes to the existing mental competency system for criminal defendants, including requiring the court, upon a finding of mental incompetence of a defendant charged with a felony that is not statutorily ineligible for mental health diversion, to determine whether restoring the person to mental competence is in the interests of justice.*

*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* states that if, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, the judge shall state that doubt on the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. (Pen. Code, § 1368, 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 incompetent to stand trial (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* requires the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. (Pen. Code, § 1369, subd. (a)(1).)

*Existing law* provides that if the defendant or defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

*This bill* instead provides that all proceedings in the criminal prosecution shall be suspended when an inquiry into the present mental competence of the defendant has been commenced by the court.

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

*Existing law* requires the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. If defense counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof, One of the psychiatrists or psychologists maybe named by the defense and one named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

*This bill* instead requires the court to appoint at least one licensed psychologist or psychiatrist to examine the defendant's mental condition. The court shall appoint two licensed psychologists or psychiatrists, one named by the defense and one named by the prosecution, if defense counsel informs the court that the defendant is not seeking a finding of mental competence.

*This bill* requires a licensed psychologist or psychiatrist to evaluate the defendant and submit a written report to the court. The report shall include the opinion of the expert regarding the following matters:

- A diagnosis of the defendant's mental condition, if any;
- Whether the defendant, as a result of a mental disorder or developmental disability, is able to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner;
- Whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future;
- If requested by the defense, an opinion as to whether the defendant is eligible for mental health diversion.

*This bill* provides that any statements made by the defendant during an examination of the defendant's mental competence shall not be admissible in any other proceeding. This paragraph is intended to codify the holding of the United States Supreme Court in *Estelle v. Smith* (451 U.S. 454), and is therefore declarative of existing law.

*This bill* states that if neither party objects to any competency report submitted by the appointed licensed psychologist or psychiatrist, the court may determine competency of the defendant based on the report.

*This bill* states that if either party objects and requests a hearing, the court shall hold a hearing to determine competence.

*This bill* clarifies that if the defendant waives the right to a jury trial, the hearing shall be heard by the court. Otherwise, a determination of the defendant's competency to stand trial shall be decided by a jury. The verdict of the jury shall be unanimous.

*This bill* states that a court is not precluded from appointing any other qualified expert to evaluate the defendant's mental condition in addition to a licensed psychologist or psychiatrist.

*Existing law* states that if it is suspected that the defendant has a developmental disability, the court shall appoint the director of the regional center or the director's designee, to examine the defendant and determine whether the defendant has a developmental disability, as defined, and is therefore eligible for regional center services and supports. The regional center director or their designee shall provide the court with a written report informing the court of this determination. (Pen. Code, § 1369, subd. (a)(3).)

*This bill* recasts the above provision.

*Existing law* states that a person who has been found to be IST may be eligible for mental health diversion. (Pen. Code, § 1001.36, subd. (b)(1)(D).)

*Existing law* provides that if the defendant is found mentally competent, the criminal process shall resume. If the defendant has been found IST, 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).)

*This bill* states that if the defendant is found to be IST and is not charged with an offenses that is statutorily ineligible for mental health diversion, the court shall do all of the following:

- Determine whether restoring the person to mental competence is in the interests of justice;
- In exercising its discretion pursuant to this clause, the court shall consider the relevant circumstances of the charged offense, the defendant's mental health condition and history of treatment, whether the defendant is likely to face incarceration if convicted, the likely length of any term of incarceration, whether the defendant has previously been found incompetent to stand trial, whether restoring the person to mental competence will enhance public safety, and any other relevant considerations.

*This bill* if restoring the person to mental competence is in the interests of justice, the court shall state its reasons orally on the record and the case shall proceed with restoration of the defendant.

*This bill* states that if restoring the mental competence of the defendant is not in the interests of justice, the court shall conduct a hearing to determine whether the defendant is eligible for mental health diversion. If the court deems the defendant eligible, grant diversion for a period not to exceed two years 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 complaint, whichever is shorter.

*This bill* requires the hearing to determine defendant's eligibility for mental health diversion to be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant released on their own recognizance pending the hearing.

*This bill* provides that if the defendant is ineligible for diversion or if diversion is terminated unsuccessfully, the court may, after notice to the defendant, defense counsel, and prosecution, hold a hearing to determine whether to do the following:

- Order modification of the treatment plan in accordance with a recommendation from the treatment provider;
- Refer the defendant to assisted outpatient treatment (AOT), only in a county where services are available and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for AOT shall be held within 45 days, and if delayed beyond 45 days, the defendant shall be released on own recognizance pending the hearing. If the defendant is accepted into AOT, the charges shall be dismissed.
- Refer the defendant to the county conservatorship investigator of the county of commitment for possible conservatorship proceedings, only if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled, as defined. If a petition is not filed within 30 days of the referral, the court shall order the defendant to be released on their own recognizance pending conservatorship proceedings. The charges shall be dismissed the filing of either a temporary or permanent conservatorship petition.
- Refer the defendant to the CARE program. A hearing to determine eligibility shall be held within 14 court days after the date on which the petition for referral is filed. If the hearing is delayed beyond 14 court days, the court shall order the defendant released on their own recognizance pending the hearing. If defendant is accepted into the CARE program, the charges shall be dismissed.

- Reinstate competency proceedings in which case the court shall credit any time spent in mental health diversion against the maximum term of commitment.

*This bill* states that if the defendant is found IST and resorting the defendant is in the interests of justice or they are charged with an offense that is statutorily ineligible for mental health diversion, the proceedings shall be suspended until the person becomes mentally competent.

*This bill* provides that if at any time after the finding of IST, the court finds that there is no substantial likelihood that the defendant will attain mental competency in the foreseeable future and it appears that the defendant is gravely disabled, as defined, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant.

*This bill* states that if a defendant is returned to court without attaining competency, and the prosecution elects to dismiss and refile charges, the court shall presume that the defendant is IST unless presented with relevant and credible evidence that the defendant is competent.

*This bill* states that if the court is satisfied that it has received credible evidence that the defendant is competent, the court shall proceed with the trial on competency. Otherwise the court shall find the defendant IST.

*This bill* provides that if the defendant is IST after refile of charges, the defendant may be further committed only for the balance of time remaining on the maximum term of commitment. This term applies to the aggregate of all previous commitments.

*This bill* provides that for IST defendants who have determined by a regional center to have a developmental disability, if the court finds that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the court shall proceed with determining whether the defendant should be committed pursuant to Lanterman-Petris-Short Act or as a person with a developmental disability with the State Department of Developmental Services.

*This bill* makes other conforming changes to the IST statute for defendants determined by a regional center to have a developmental disability.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

SB 1323 modernizes California's current "one-size-fits all approach to competency" by promoting greater efficiency in court processes, reducing costs, and producing better long-term outcomes for individuals with serious mental illness. Under existing law, judges have no choice: all individuals accused of a felony who are found incompetent to stand trial must be sent for competency restoration. These individuals are funneled to our State's most restrictive and costly State hospital beds, at times waiting many months in jail prior to placement at a state hospital.

SB 1323 aligns with the recommendations of experts at the Council of State Governments Justice Center (CSG) and the Committee on Revision of the Penal Code (CRPC) to improve state competency to stand trial procedures for those charged with felonies. It will do this by expediting treatment-based solutions for these vulnerable people who become system-involved through felony convictions due to mental illness. If a judge determines that sending the person for restoration of competency is not in the interests of justice, they can instead pursue treatment through mental health diversion, assisted outpatient treatment, treatment through CARE court, or placement in CARE Court. They will also be able to reinstate competency proceedings if the person does not succeed or cannot be placed in another treatment option.

## 2. Background: Mental Competency in Criminal Proceedings

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 a person 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 incompetent to stand trial [IST]. (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

If after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

“The state treats the majority of felony ISTs in state hospitals; however, many individuals wait in county jails for many months given the limited number of DSH beds, which has resulted in a waitlist of felony ISTs who have not been admitted to DSH. The treatment provided to felony ISTs—known as ‘competency restoration treatment’—differs from general mental health treatment. The objective of competency restoration treatment is to treat a felony IST until they are competent enough to face their criminal charge, rather than provide comprehensive treatment for an underlying mental health condition.” (See The 2022-23 Budget: Analysis of the Governor’s Major Behavioral Health Proposals (ca.gov) Legislative Analyst’s Office [as of Mar. 25, 2024].)

### 3. Committee on Revision of the Penal Code’s Recommendation

On January 1, 2020, the Committee on the Revision of the Penal Code (“Committee”) was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee’s objectives are as follows:

- 1) Simplify and rationalize the substance of criminal law;
- 2) Simplify and rationalize criminal procedures;
- 3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and,
- 4) Improve the system of parole and probation.

(Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

After holding meetings over the course of a year and hearing testimony from more than 50 witnesses, extensive public comment, thorough staff research, and deliberations of Committee members over the course of 6 public meetings, the Committee released its third annual report December 2022 describing its work and resulting 10 recommendations. (See [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2022.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf) [as of Apr. 2, 2024].)

One of the Committee’s recommendations is to modernize the competency to stand trial system. The Committee’s report described the need to make changes to the current system:

The current system does not provide long-term treatment or improve safety. People who are found incompetent and then restored to competency often cycle back through the very same process — over a 10 year period, one-third of all people who were restored to competency and discharged from the Department of State Hospitals were later arrested and once again found incompetent to stand trial. Many were readmitted to DSH multiple times. The number of people found incompetent with more than 14 arrests has also steadily increased. Once returned to court after being found competent at the state hospital, people are most likely to be sent back into the community — only 24% of people found incompetent to

stand trial are sent to prison — and 70% of people restored to competency are rearrested within 3 years.

....

This experience shows that California is putting too many people through the competency restoration process for little to no long-term benefit for them or to public safety. Dr. Katherine Warburton, Statewide Medical Director at the California Department of State Hospitals, explained to the Committee that the competency restoration process does nothing to interrupt cycles of criminal legal involvement because the goal of competency restoration is only to achieve a basic understanding of the court process, not to provide continuing care. Despite the tremendous resources spent on restoring people to competency, people, as Dr. Warburton put it, “often end up worse off than when they started.”

A large cause of the problem is that once someone is determined to be incompetent in a felony case, the judge has no choice but to commit that person to the state hospital for restoration, even if other treatment options would be cheaper, more effective, and more protective of public safety. The competency system has become a catchall for a large number of people with mental health issues that come before the criminal court. As panelist Dr. Daniel Murrie, an expert on competency practices across the country, told the Committee, there are “far, far better approaches to linking people with the services they need.”

For example, Judge Steven Leifman explained that in Miami-Dade County, people charged with nonviolent felonies are put in a diversion program once stabilized, foregoing restoration and prosecution altogether, which has ultimately resulted in better outcomes. Judge James Bianco noted that Los Angeles County has successfully released people charged with serious or violent cases to diversion, rather than sending them to the state hospital.

(*Id.* at 48-51.) The Committee made three recommendations:

- 1) Require judges to determine whether restoration to competency is in the interests of justice by considering all relevant circumstances of the offense, including the likelihood and length of incarceration if convicted. . . .
- 2) Require court-appointed mental health experts to return competency evaluations within 30 days. The court may extend the time for good cause.
- 3) Require a judge to determine — and court-appointed mental health experts to opine — whether a person found incompetent to stand trial has a substantial probability of attaining competency within the required time frame. In addition, require the court-appointed mental health expert to evaluate their suitability for mental health diversion.

This bill implements most of these recommendations. Specifically, this bill requires judges to determine whether the restoration to competency of a person charged with a felony is in the interests of justice by considering all relevant circumstances of the offense. If the judge concludes that restoration is not in the interests of justice, the court can then consider diversion, a

conservatorship, or other existing treatment options. This bill also requires the appointed psychologist or psychiatrist, if requested by the defense, to provide an opinion on the defendant's suitability for mental health diversion and whether a person found incompetent to stand trial has a substantial likelihood of attaining competency in the foreseeable future.

#### 4. IST Treatment Delays and Recent Litigation

Over the last decade, the number of people in California charged with a felony offense and found IST has increased significantly, far outpacing the state's ability to provide timely services in response. Following litigation, the state was placed under a court order to reduce the time it takes to admit someone to the state hospital to restore them to competency. (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (*Id.* at p. 737.) The Court ordered that DSH must begin substantive restoration services within 28 days of being placed on the list. (*Id.* at p. 730.) The court's order is being implemented in phases, with the original target date being set on February 27, 2024 to meet the 28 day standard.

However, on October 6, 2023, the court modified the interim benchmarks and final target date for compliance with the 28 day standard as follows: March 1, 2024 – provide substantive treatment services within 60 days; July 1, 2024 – within 45 days; November 1, 2024 – within 33 days; and March 1, 2024 – within 28 days. (See 24-25 Governor's Budget Estimate <[https://www.dsh.ca.gov/About\\_Us/docs/2024-25\\_Governors\\_Budget\\_Estimate.pdf](https://www.dsh.ca.gov/About_Us/docs/2024-25_Governors_Budget_Estimate.pdf)> [as of Apr. 2, 2024].)

#### 5. Mental Health Diversion

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) in the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment; 4) the defendant must consent to diversion and waive the right to a speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subs. (b)-(c).) The defendant is not eligible if they are charged with specified crimes. (Pen. Code, § 1001.36, subd. (d).)

In addition to the eligibility requirements of the defendant, mental health treatment program must meet the following requirements: 1) the court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant; 2) the defendant may be referred to a program of mental health treatment

utilizing existing inpatient or outpatient mental health resources; 3) and the program must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).) The court has the discretion to select the specific program of diversion for the defendant. The county is not required to create a mental health program for the purposes of diversion, and even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must agree to receive the defendant for treatment. (Pen. Code, § 1001.36, subd. (f)(1)(A).)

The diversion program cannot last more than two years for a felony and cannot last for more than a year on a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).) If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

The stated purpose of the diversion program is "to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (Pen. Code, § 1001.35, subd. (b).)

As noted above, consistent with the recommendation of the Committee on the Revision of the Penal Code, this bill would require the appointed psychologist or psychiatrist evaluating the defendant on the issue of competence to also provide an opinion on eligibility for mental health diversion, if requested by the defense.

This bill would require the court to consider placing a defendant on mental health diversion in situations where the court determines that restoring the person to competency is not in the interests of justice.

## **6. Argument in Support**

According to Californians for Safety and Justice:

Currently, California fails to provide prompt mental health treatment for individuals with the most severe mental illnesses who are facing felony criminal charges. These are individuals who are so mentally ill that they have been deemed incompetent to stand trial. Judges are now mandated by law to send all of these individuals to be "restored to competency," usually at the Department of State Hospital (DSH), a process that does not treat their underlying mental illness and does not lead to long-term care. Because beds at DSH are scarce, people wait for months in restrictive jail settings, which are not equipped to provide mental health care.

SB 1323 would untie the hands of judges, giving them options to place individuals in other treatment settings including mental health diversion, CARE Court, outpatient assisted treatment, and conservatorships. The bill makes other improvements to the IST process, reducing costs and increasing access to care.

## 7. Argument in Opposition

According to California District Attorneys Association:

According to the Department of State Hospitals, over 66% of defendants who were initially found to be incompetent were able to have their competency restored. (Incompetent to Stand Trial Solutions Workgroup – Report of Recommended Solutions November 2021. Pg. 11.) An individual’s mental health status and one’s competency can be fluid and can change over time. The 66% restoration rate bears this out. Oftentimes, the issue of competency is a factual issue that must be litigated, with legal findings left to the court. This factual determination and legal analysis should be a fair process dedicated to reaching the truth of the individual’s without mental competency. However, SB 1323 unfairly and inappropriately allows experts to opine on legal issues such as a defendant’s eligibility for diversion and to speculate whether competency and mental health treatment are even worth it for a particular individual. What is more, SB 1323 unfairly tips those scales of justice by eliminating the prosecutor’s ability to demand a jury trial on the issue of competency, while allowing the defendant the ability to demand a jury trial.

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