
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 317 **Hearing Date:** April 27, 2021
Author: Stern
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Competence to stand trial*

HISTORY

Source: California Public Defenders Association
County of Los Angeles

Prior Legislation: SB 1187 (Beall), Ch. 1008, Stats. 2018
AB 2186 (Lowenthal), Ch. 733, Stats. 2014
AB 2625 (Achadjian), Ch. 742, Stats. 2014
SB 1412 (Nielsen), Ch. 759, Stats. 2014
SB 586 (Wiggins), Ch. 556, Stats. 2007

Support: ACLU California Action; California Psychological Association; Californians for Safety and Justice; Californians United for A Responsible Budget; Depression and Bipolar Support Alliance; Ella Baker Center for Human Rights; Initiate Justice; National Association of Social Workers, California Chapter; San Francisco Public Defender

Opposition: None known

PURPOSE

The purpose of this bill is to provide good conduct credits for a person receiving treatment in a treatment facility and to make modifications to existing procedures related to a finding of mental incompetence for misdemeanor defendants to provide for community-based treatment rather than confinement in a treatment facility.

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 a criminal action, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel and permit counsel to confer with the defendant to form an opinion as to the defendant's mental competence. (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 has been determined. If a jury has been empaneled and the defendant is declared IST, the jury shall be discharged. (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, the trial on the misdemeanor offense charged shall proceed, and judgment may be pronounced. (Pen. Code, § 1370.01, subd. (a)(1).)

Existing law states that if the defendant is found IST, the trial, judgment, or hearing on the alleged misdemeanor violation shall be suspended until the person becomes mentally competent, and the court shall order:

- The defendant to be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's restoration to mental competence, or placed on outpatient status; and,
- Upon the filing of a certificate of restoration to competence, the defendant be returned to court.

(Pen. Code, § 1370.01, subd. (a)(1).)

Existing law authorizes a court, if the defendant is found IST, to make a finding that the defendant is an appropriate candidate for diversion, and if the defendant is eligible, may grant diversion for a period not to exceed one year. Upon dismissal of charges at the conclusion of the period of diversion, a defendant shall no longer be deemed IST. (Pen. Code, § 1370.01, subd. (a)(2).)

Existing law requires, prior to making the order directing the defendant be confined in a treatment facility or placed on outpatient status, the court to do the following:

- Order the county mental health director to evaluate the defendant and to submit to the court a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility; and,
- Determine whether the defendant, with the advice of their counsel, consents to the administration of antipsychotic medication, as provided.

(Pen. Code, § 1370.01, subd. (a)(3).)

Existing law requires, within 90 days of commitment, the medical director of the treatment facility to make a written report to the court and the county mental health director concerning the defendant's progress toward recovery of mental competence. If the defendant is on outpatient status, the staff shall make the written report concerning defendant's progress to the county mental health director and the county mental health director shall report to the court on this matter. (Pen. Code, § 1370.01, subd. (b).)

Existing law states that if the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or outpatient status. Thereafter, reports shall be made at six-month intervals or until the defendant becomes mentally competent. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. (Pen. Code, § 1370.01, subd. (b).)

Existing law provides that if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant returned to court to initiate conservatorship proceedings. (Pen. Code, § 1370.01, subd. (b).)

Existing law states that if, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court to initiate conservatorship proceedings. (Pen. Code, § 1370.01, subd. (c)(1).)

This bill modifies the proceedings related to a finding of mental competence or incompetence of defendants charged with a misdemeanor.

This bill provides that if a defendant is found IST, the court may do any of the following:

- Conduct a hearing to determine whether the defendant is eligible for mental health diversion, and if the court deems the defendant is eligible, grant diversion for a period not to exceed one year from the date the defendant 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;
- Refer the matter to any available collaborative justice, diversion court, or community-based treatment appropriate to the goal of improving the mental health of the defendant, as provided. The term of diversion or mandatory treatment shall not exceed one year from the date the defendant is accepted or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter. Criminal proceedings shall remain suspended until diversion or mandatory treatment is terminated.
- Dismiss the charges in the interests of justice. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director.

This bill specifies that a referral to a collaborative justice, diversion court, or community-based treatment shall be made only if all of the following apply:

- The entity receiving the referral agrees to accept responsibility for the treatment of the defendant;
- Mental health services are provided only to the extent resources are available; and,
- The defendant is eligible for the mental health services that are available.

This bill states that if the defendant performs satisfactorily on diversion or mandatory treatment, at the end of the period of diversion or mandatory treatment, the court shall dismiss the criminal charges.

This bill states that if any of the following circumstances exists, the court shall hold a hearing to determine whether the mandatory treatment should be modified or whether the defendant should be referred to the county conservatorship investigator to be evaluated for conservatorship:

- The defendant is charged with an additional misdemeanor allegedly committed during diversion that reflects the defendant's propensity for violence;
- The defendant is charged with a felony allegedly committed during diversion;
- The defendant engaged in criminal conduct rendering the defendant unsuitable for diversion;
- Based on the opinion of the qualified mental health expert whom the court deems appropriate, either of the following circumstances exist:
 - The defendant is performing unsatisfactorily in the assigned program; or,
 - The defendant is gravely disabled, as defined in existing law. If defendant is gravely disabled, the defendant shall be referred to the conservatorship investigator for the initiation of conservatorship proceedings. If a conservatorship is established, the charges shall be dismissed.

This bill provides that if the defendant is found IST and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

Existing law states that "treatment facility" includes a county jail and authorizes county jails to provide medically approved medication to defendants who are found to be IST and unable to provide informed consent due to a mental disorder. (Pen. Code, 1369.1, subd. (a).)

Existing law specifies the credits that may be applied to deduct time from a person's term of confinement in a county jail, industrial farm, road camp, or a city jail. (Pen. Code, § 4109.)

This bill allows those credits to be applied to a person who is committed to a treatment facility pending the return of mental competence.

COMMENTS

1. Need for This Bill

According to the author of this bill:

This bill addresses two issues. First, existing law provides that incompetent defendants can only receive time served credits for good conduct when in a county jail, however it does not apply to time spent while in a treatment facility. Secondly, existing law does not provide incompetent defendants adequate mental health treatment when the defendant is charged with a misdemeanor. These defendants often spend most, if not all, of their pre-trial detention waiting in jail for a treatment bed.

SB 317 ensures incompetent defendants are eligible for the same time served credit for good conduct as their competent counterparts, while receiving treatment in any treatment facility or as an outpatient, not just a county jail treatment. SB 317 provides pathways to appropriate mental health treatment for defendants charged with misdemeanors. Instead of being released before adequate treatment has been administered, there are alternate options for incompetent defendants: diversion for one year or the maximum sentencing for the more serious offense being charged (whichever is shorter), transfer to a collaborative court, refer case to a conservatorship investigator, or dismissal of the case as appropriate. Not all options are available for every defendant; they are dependent on the situation and mental health status of each defendant. A tailored approach allows California to use existing tools to help defendants gain competency and avoid a cycle of incarceration.

2. Mental Competency to Stand Trial 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 proceedings may be ordered and initiated. (Penal Code Section 1370, subd. (c)(2).) Similar proceedings are provided for when a defendant is found IST in misdemeanor cases. (Pen. Code, § 1370.01.)

This bill makes several changes to the laws governing procedures following a finding of IST in misdemeanor cases. Specifically, this bill provides that upon a finding that a defendant is IST, the court has the following options: (1) place a defendant in a mental health diversion program; (2) refer the defendant to a collaborative justice, diversion court, or community-based treatment program, or (3) dismiss the case in the interests of justice. Existing law provides that upon a finding that the defendant is IST, the court shall order the defendant to be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status. (Pen. Code, § 1370.01, subd. (a)(1).) The court may make a determination as to whether the defendant is eligible for diversion and grant diversion for a period not to exceed one year or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter. (Pen. Code, § 1370.01, subd. (a)(2) & (c)(1).) Under this bill's provisions, a treatment facility, which often means confinement in county jail, would no longer be one of the options for placement of a misdemeanor defendant who is mentally incompetent.

This bill specifies that in order to be referred to a collaborative justice, diversion court or community-based treatment, the entity receiving the referral must agree to accept responsibility for the treatment of the defendant, mental health services are provided only to the extent resources are available and defendant must be eligible for those services. If a defendant performs satisfactorily in diversion or mandatory treatment, the charges shall be dismissed, which is also required under existing law if a defendant completes diversion.

This bill states that if any of the following exist, the court shall hold a hearing to determine whether the mandatory treatment should be modified or if conservatorship proceedings should be initiated: (1) defendant is charged with a new misdemeanor during diversion that shows the defendant's propensity for violence; (2) defendant is charged with a felony during diversion; (3) defendant engaged in criminal conduct making them unsuitable for diversion; (4) based on the opinion of a qualified medical expert, the defendant is performing unsatisfactorily in the program or the defendant is gravely disabled, as defined in existing law. If the defendant is found to be gravely disabled, conservatorship proceedings may be initiated and if a conservatorship is established, the criminal charges shall be dismissed.

This bill states that for a person found IST for a violation of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. The court may modify the terms and conditions of supervision to include appropriate mental health treatment.

3. Mental Health Diversion

Mental health diversion was enacted by the Legislature in 2018. (AB 1810 (Health), Ch. 34, Stats. 2018.) The stated purposes of mental health diversion are to promote: (1) increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety; (2) 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; and, (3) providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)

Mental health diversion is a pretrial diversion program, meaning that a defendant does not have to plead guilty in order to be granted diversion. During the period of diversion, the criminal proceedings are postponed to allow the defendant to undergo mental health treatment. (Pen. Code, § 1001.36, subd. (c).) The court may grant pretrial diversion to a defendant charged with a misdemeanor or a felony offense that is not statutorily excluded if the following criteria are met:

- The court is satisfied that the defendant suffers from a mental disorder as provided and evidence of the defendant's mental disorder is provided by the defense which shall include a recent diagnosis by a qualified mental health expert;
- The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense;
- In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment;
- The defendant agrees to comply with treatment as a condition of diversion;
- The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community.

(Pen. Code, § 1001.36, subd. (b).) The mental health treatment plan approved and ordered by the court must meet the specialized mental health needs of the defendant. Before approving a proposed treatment program, the court shall consider the request of the defense, prosecution, and the interests of the community. (Pen. Code, § 1001.36, subd. (c)(1).) The provider of the mental health treatment program in which the defendant is placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (c)(2).) Upon successful completion of diversion, the court shall dismiss the charges. (Pen. Code, § 1001.36, subd. (e).) If the defendant is charged with a new violent misdemeanor, a new felony, or engages in conduct rendering them unsuitable for diversion, or if a qualified mental health expert believes the defendant is performing unsatisfactorily or that the defendant may need to be conserved, the court shall hold a hearing to determine whether to reinstate criminal proceedings, whether treatment should be modified, or whether the defendant should be conserved. (Pen. Code, § 1001.36, subd. (d).)

Under existing law, an IST defendant may be placed in a diversion program instead of being placed in a treatment facility. This bill specifically authorizes the court, when a misdemeanor defendant is found IST, to place an eligible defendant in mental health diversion. This bill states that the period of diversion shall not exceed one year or the maximum term of imprisonment for the most serious charged offense, whichever is shorter.

4. Credits Earning During Treatment to Restore Competency

When a defendant is confined in county jail, a defendant is entitled to earn additional credits against their sentence at a rate of 1 day of credit for every actual day served. For example, a person in county jail for six months can earn and receive six additional months of credits, which would equal a sentence of 12 months. (Pen. Code, § 4019.)

However, a person that is IST and is committed to a state hospital does not earn additional custody credits. A defendant who is IST that is transferred from a county jail to a state hospital earns day for day credit against for time spent in the state hospital. Thus, if they spent 6 months in the state hospital while they were restored to competency, they would be entitled to 6 months credit against any sentence they ultimately receive on the charge(s) for which they were declared IST. A defendant committed to a state hospital for treatment is neither statutorily nor constitutionally entitled to conduct credits for preconviction custody. (Pen Code, § 4019; *People v. Jennings* (1983) 143 Cal. App. 3d 148.)

This bill would extend the ability to earn conduct credits to persons confined in a state hospital or other mental health treatment facility pending restoration of competency.

5. Argument in Support

According to the California Public Defenders Association and the County of Los Angeles, the co-sponsors of this bill:

SB 317 would change the conduct credit statute to include a defendant who, because of mental illness, spends pre-trial custody time in a state hospital or other mandatory mental health facility, rather than in a detention facility. It would also allow individuals charged with misdemeanors who are found incompetent to stand trial, in lieu of Jail-based Competency Training, to receive diversion or if necessary, referred for conservatorships, but only if certain criteria are met. SB 317 avoids overburdening county mental health systems by clarifying that a defendant can only be ordered into program if the relevant program or mental health services exist.

The current system does not work. Defendants whose offense is the product of mental illness are routinely incarcerated longer than defendants without mental illness. Similarly, because current competency restoration programs have long waitlists, incompetent misdemeanor defendants end up in jail without receiving the necessary mental health treatment and are then released to the streets and often return to the criminal justice system because their mental illness was not treated.

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