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AB-1962 Criminal proceedings: mental competence. (2015-2016)

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Assembly Bill No. 1962

CHAPTER 405

An act to amend Section 1369 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 21, 2016. Filed with Secretary of State September 21, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1962, Dodd. Criminal proceedings: mental competence.

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, which includes requiring the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate.

This bill would, on or before July 1, 2017, require the State Department of State Hospitals, through the use of a workgroup representing specified groups, to adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court. The bill would provide that if there is no reasonably available expert who meets the guidelines, the court shall have discretion to appoint an expert who does not meet the guidelines.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1369 of the Penal Code is amended to read:

1369. Except as stated in subdivision (g), a trial by court or jury of the question of mental competence shall proceed in the following order:

(a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the 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. The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence. If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant. The examining psychiatrists or

licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail. If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital.

The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment.

(b) (1) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence.

(2) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so.

(c) The prosecution shall present its case regarding the issue of the defendant's present mental competence.

(d) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention.

(e) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury.

(f) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous.

(g) Only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole.

(h) (1) The State Department of State Hospitals shall, on or before July 1, 2017, adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court pursuant to this section. To develop these guidelines, the State Department of State Hospitals shall convene a workgroup comprised of the Judicial Council and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accrediting bodies for psychologists and psychiatrists, and other interested stakeholders.

(2) When making appointments pursuant to this section, the court shall appoint experts who meet the guidelines established in accordance with this subdivision or experts with equivalent experience and skills. If there is no reasonably available expert who meets the guidelines or who has equivalent experience and skills, the court shall have the discretion to appoint an expert who does not meet the guidelines.