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**SB-557 Criminal proceedings: mental competence: expert reports.** (2019-2020)

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**Senate Bill No. 557**

**CHAPTER 251**

An act to add Section 1369.5 to the Penal Code, relating to criminal procedure.

[ Approved by Governor September 05, 2019. Filed with Secretary of State September 05, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 557, Jones. Criminal proceedings: mental competence: expert reports.

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 whom the court may deem appropriate, to examine the defendant.

Existing law requires a defendant found mentally incompetent to stand trial to undergo evaluation by the community program director, the regional center director, or the county mental health director, and requires the evaluator to make written recommendations to the court, prior to the court ordering the defendant to undergo outpatient treatment or be committed to the state hospital, a developmental center, a residential facility, or any other treatment facility.

If the director who evaluates the defendant determines that the defendant has regained mental competence, existing law requires the director to immediately certify that fact to the court by filing a certificate of restoration with the court.

This bill would make all documents submitted to a court pursuant to this process presumptively confidential, except as otherwise provided by law. The bill would require the documents to be retained in the confidential portion of the court's file, and would require counsel for the defendant and the prosecution to maintain the documents as confidential. The bill would authorize counsel for the defendant and the prosecution to inspect, copy, or utilize the documents, and any information contained in the documents, without an order from the court for specified purposes, including the safety of the public. The bill would require a motion, application, or petition to access the documents to be decided according to specified court rules.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

**SECTION 1.** Section 1369.5 is added to the Penal Code, to read:

**1369.5.** (a) A document submitted to a court pursuant to this chapter, including, but not limited to, Sections 1369, 1370, 1370.01, 1370.1, and 1372, is presumptively confidential, except as otherwise provided by law.

(b) A document described in subdivision (a) shall be retained in the confidential portion of the court's file. Counsel for the defendant and the prosecution shall maintain the documents as confidential.

(c) (1) The defendant, counsel for the defendant, and the prosecution may inspect, copy, or utilize the documents, and any information contained in the documents, without an order from the court for purposes related to the defense, prosecution, treatment, and safety of the defendant, and for the safety of the public.

(2) A motion, application, or petition to access the documents shall be decided in accordance with subdivision (h) of Rule 2.551 of the California Rules of Court.

**SEC. 2.** The Legislature finds and declares that Section 1 of this act, which adds Section 1369.5 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of defendants with respect to personal information contained within expert reports and other documents that are prepared as part of mental competency hearings, it is necessary that those documents be presumptively confidential, except as otherwise provided by law.