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SB-317 Competence to stand trial. (2021-2022)

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Date Published: 10/07/2021 02:00 PM

Senate Bill No. 317

CHAPTER 599

An act to amend Section 4019 of, and to repeal and add Section 1370.01 of, the Penal Code, relating to criminal procedure.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 317, Stern. Competence to stand trial.

(1) 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 and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the defendant to competency. Existing law suspends a criminal action pending restoration to competency.

This bill would repeal provisions regarding the restoration of competency for a person charged with a misdemeanor, or a violation of probation for a misdemeanor, including provisions regarding administration for antipsychotic medication. The bill would instead authorize the court to conduct an inquiry into a defendant's competency, as specified. The bill would authorize a court, upon finding the defendant incompetent to stand trial, to suspend the proceedings and take certain actions, including granting diversion not to exceed one year or dismissing the charges, as specified.

(2) Existing law provides that a prisoner, who, for specified reasons, is confined in or committed to a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, shall, for each 4-day period of custody, have 2 days deducted from the prisoner's period of confinement, except as specified.

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

This bill would incorporate additional changes to Section 4019 of the Penal Code proposed by AB 1542 to be operative only if this bill and AB 1542 are enacted and this bill is enacted last.

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

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

SECTION 1. Section 1370.01 of the Penal Code is repealed.

SEC. 2. Section 1370.01 is added to the Penal Code, to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year 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 misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall 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 to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b) or (d) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or the director's designee.

(c) If the defendant is found mentally incompetent 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 pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

SEC. 3. Section 4019 of the Penal Code, as amended by Section 3 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) (1) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(2) Credits earned pursuant to this section for a period of flash incarceration pursuant to Section 1203.35 shall, if the person's probation or mandatory supervision is revoked, count towards the term to be served.

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 3.5. Section 4019 of the Penal Code, as amended by Section 3 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner participates in a treatment program pursuant to Section 1203.44.

(9) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) (1) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(2) Credits earned pursuant to this section for a period of flash incarceration pursuant to Section 1203.35 shall, if the person's probation or mandatory supervision is revoked, count towards the term to be served.

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 4. Section 4019 of the Penal Code, as amended by Section 4 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(j) This section shall become operative on January 1, 2023.

SEC. 4.5. Section 4019 of the Penal Code, as amended by Section 4 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner participates in a treatment program pursuant to Section 1203.44.

(9) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(j) This section shall become operative on January 1, 2023.

SEC. 5. Sections 3.5 and 4.5 of this bill incorporate amendments to Section 4019 of the Penal Code proposed by both this bill and Assembly Bill 1542. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 4019 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1542, in which case Sections 3 and 4 of this bill shall not become operative.