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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 557                      **Hearing Date:** April 2, 2019  
**Author:** Jones  
**Version:** March 27, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal proceedings: mental competence: expert reports*

### HISTORY

**Source:** California Judges Association  
**Prior Legislation:** None  
**Support:** California Public Defenders Association  
**Opposition:** None known

### PURPOSE

***The purpose of this bill is to make documents related to a defendant's competency in criminal proceedings confidential.***

*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* provides that a person is mentally incompetent if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (*Ibid.*)

*Existing law* requires, when a doubt been declared as to the defendant's mental competence, the court to hold a trial determine the mental competence of the defendant. (Pen. Code § 1368, subs. (a) & (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 incompetent to stand trial is determined. (Pen. Code § 1368, subd. (c).)

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

*Existing law* provides that in order to determine whether a defendant is IST, the court shall order a trial on the question of the defendant's mental competence and requires the court to appoint a

psychiatrist or licensed psychologist to examine the defendant. If the defendant or defendant's counsel 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).)

*Existing law* requires the examining psychiatrists or licensed psychologists to 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, and whether or not treatment with antipsychotic medication is medically appropriate and whether antipsychotic medication is likely to restore the defendant to mental competence. The examining psychiatrist or licensed psychologist shall also address the issues of whether the defendant has the capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. (Pen. Code, § 1369, subd. (a)(2).)

*Existing law* provides that an involuntary medication order is valid for no longer than one year and the court must review the order within 90 days and at six month intervals thereafter to determine whether grounds for the order still exist. Reports regarding the defendant's progress toward mental competency shall be provided to the court and a copy given to defense counsel and the prosecution. (Pen. Code, § 1370, subs. (a)(7)(A) & (b)(1).)

*Existing law* states that if the medical director of a state hospital, or other designated persons at a facility where the defendant is committed, or community program providing outpatient services, determines that the defendant has regained mental competence, the director or designee shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested, or by confidential electronic transmission. (Pen. Code, § 1372, subd. (a).)

*Existing law* requires court approval to seal a record; a court may not permit a record to be sealed based solely on the agreement or stipulation of the parties. (Cal. Rules of Court, rule 2.551, subd. (a).)

*Existing law* specifies procedures for unsealing a record and requires any record to unseal a record to state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. (Cal. Rules of Court, rule 2.551, subd. (h).)

*This bill* makes presumptively confidential, except as otherwise provided by law, documents submitted to a court related to a defendant's competence proceedings and requires the court to retain such documents in the confidential portion of the court's file.

*This bill* provides that the defendant, counsel for the defendant, and the prosecution may inspect these documents and shall maintain the documents as confidential.

*This bill* provides that the court may consider a motion, application, or petition to unseal the report pursuant to subdivision (h) of Rule 2.551 of the California Rules of Court.

*This bill* states that the Legislature finds and declares that in order to protect the privacy of defendants with respect to personal information contained within expert reports that are prepared

as part of mental competency examinations, it is necessary that those expert reports be presumptively confidential, except as otherwise provided by law.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

If a person is charged with a crime and is suspected of being incompetent to stand trial, written reports prepared by psychiatrists or psychologists are submitted to the court. These reports detail extremely sensitive medical and mental health information about the person, including information about the person's mental health history, current functioning, symptoms of mental illness, current and prior medications, and mental health diagnosis. This confidential information is currently open to the public, since it is contained in a criminal file, which is not confidential. If the court finds the person incompetent to stand trial, many additional records are required to be submitted to the court as part of the treatment process, and those too contain confidential information.

Under current law, certain court records are presumptively confidential, such as records in juvenile cases (Welfare and Institutions Code § 827), conservatorship cases (Welfare and Institutions Code §§ 5118 and 5328), records of the family conciliation court (Family Code § 1818(b)), paternity case files (Family Code § 7643(b)) in forma pauperis applications (Cal. Rules of Court, rules 3.54 and 8.26), search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948, and personal information of a witness or victim contained in a police, arrest, or investigative report (Penal Code § 964).

Outside of court records, medical and mental health records are normally deemed confidential, under both federal law (the Health Insurance Portability and Accountability Act, or HIPAA) and state law (Civil Code § 56.10).

SB 557 would make certain court records in criminal competency proceedings presumptively confidential. The records in a particular case could be made public if ordered by a judge. Any member of the public or press would be able to ask a judge to make this order. SB 557 preserves the defendants' privacy interests in protecting highly sensitive medical information, making this consistent with the treatment of medical records in other contexts.

### 2. Mental Competency 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 it appears that the person is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in their defense, the court may determine that the person is incompetent to stand trial. (Pen. Code § 1367.) In order to make this determination, the court appoints a psychiatrist or a licensed psychologist to examine the defendant. The examination evaluates whether the defendant has a mental disorder, the ability to understand the nature of the criminal proceedings or assist in the conduct of a defense, and whether antipsychotic medication would likely restore the defendant to mental competence.

(Pen. Code, § 1369, subd. (a).) The issue of whether a defendant is competent to stand trial would be determined either by a jury trial or court trial. (Pen. Code, § 1369, subds. (a)-(g).)

If after an examination and trial the defendant is found incompetent to stand trial, the court shall determine whether the defendant is referred to the Department of State Hospitals or other treatment facility or placed on outpatient status, and the criminal proceedings are suspended. (Pen. Code § 1370, subds. (a)(1)(B) & (b)(2).) The court shall also determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication and make an order for involuntary medication if necessary based on specified factors. (Pen. Code, § 1370, subd. (a)(2)(B).) Involuntary medication orders may last no more than one year and the court must review the order within six months to determine if the grounds for the authorization remain. (Pen. Code, § 1370, subd. (a)(7)(A).) The treating agency shall submit reports to the court periodically on the offender's progress toward regaining mental competency. (Pen. Code, § 1370, subd. (b)(1).) 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 incompetent to stand trial may be committed for no more than two years. (Pen Code §1370, subd. (c).) If the defendant has not recovered mental competence by the end of the two-year period, or 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 may be ordered. (Penal Code Section 1370, subd. (c)(2).)

This bill would make documents related to a defendant's mental competency, which would include the appointed psychiatrist or licensed psychologist's examination, recommendations, progress reports, and certificates of restoration, confidential except otherwise provided by law. The defense and prosecution would have access to these documents and the court could also unseal the confidential records or parts of the records upon a request filed with the court.

### **3. Argument in Support**

According to the California Judges Association, the sponsor of this bill:

If a person is charged with a crime and is suspected of being incompetent to stand trial, written reports prepared by psychiatrists or psychologists are submitted to the court. These reports detail extremely sensitive medical and mental health information about the person, including information about the person's mental health history, current functioning, symptoms of mental illness, current and prior medications, and mental health diagnosis. This confidential information is currently open to the public, since it is contained in a criminal file, which is not confidential. If the court finds the person to be incompetent to stand trial, many additional records are required to be submitted to the court as part of the treatment process, and those too contain confidential information.

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