

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SP22-03

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Mental Competency Proceedings	Review and submit comments by March 18, 2022
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 4.130	May 16, 2022
<b>Proposed by</b>	<b>Contact</b>
Criminal Law Advisory Committee Hon. Brian. M. Hoffstadt, Chair	Sarah Fleischer-Ihn, 415-865-7702 <a href="mailto:sarah.fleischer-ihn@jud.ca.gov">sarah.fleischer-ihn@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee recommends amendments to California Rules of Court, rule 4.130, to reflect statutory changes to Penal Code section 1370 authorizing the Department of State Hospitals to conduct a reevaluation of a defendant found to be incompetent to stand trial in specified circumstances, and statutory changes to Penal Code section 1370.01 regarding defendants found incompetent to stand trial in misdemeanor criminal proceedings.

### Background

Penal Code section 1370, which applies to felony cases in which a defendant is found to be mentally incompetent, was amended, in relevant part, to authorize the Department of State Hospitals to conduct a reevaluation of a defendant in county custody if the defendant has been committed to and awaiting admission to the department for 60 days or more (Assem. Bill 133; Stats. 2021, ch. 143).

Penal Code section 1370.01, which applies to findings misdemeanor cases in which a defendant is found to be incompetent was amended, in relevant part, to repeal provisions regarding the restoration of competency for a person charged with a misdemeanor, or a violation of probation for a misdemeanor, and, on finding the defendant incompetent to stand trial, requiring a court to suspend the proceedings and take certain actions, including granting diversion not to exceed one year or dismissing the charges (Sen. Bill 317; Stats. 2021, ch. 599).

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

## The Proposal

This proposal would amend rule 4.130, to reflect recent statutory changes, as follows:

- Amend subdivision (d)(2)(G) to clarify that a placement recommendation from the court-appointed expert applies only to felonies;
- Add new subdivision (d)(2)(H) to require the expert competency report to contain an opinion as to whether a misdemeanor defendant is “gravely disabled,” to incorporate statutory changes that allow a court to refer misdemeanor defendants ineligible for diversion to the county conservatorship investigator for possible conservatorship proceedings;
- Amend subdivision (f)(2) to clarify that restoration applies only to felonies and those found incompetent to stand trial because of developmental disabilities;<sup>1</sup>
- Add new subdivision (f)(3) to state posttrial options when a defendant is found incompetent to stand trial in a misdemeanor criminal proceeding;
- Amend subdivision (g) to delete provisions that mirror statutes on mental health diversion, and shift the focus to the procedure for reinstatement of felony proceedings when the circumstances in Penal Code section 1001.36(d) exist;
- Amend the title to subdivision (h) to clarify that the contents apply to posttrial hearings on competence under Penal Code section 1370; and
- Amend subdivision (h)(2) to add references to reevaluations done by the Department of State Hospitals.

## Alternatives Considered

The committee considered adding a new subdivision on mental health diversion for a defendant found incompetent to stand trial in a misdemeanor criminal proceeding under Penal Code section 1370.01. However, because that new subdivision in the rule would largely mirror the statutory requirements already stated in Penal Code section 1370.01, the committee decided not to propose a new subdivision. Instead, the committee added posttrial options for when a defendant is found incompetent to stand trial in a misdemeanor criminal proceeding to the existing subdivision on posttrial procedures.

## Fiscal and Operational Impacts

The statutory changes to Penal Code section 1370.01 include an evaluation by a qualified mental health expert on whether specified defendants are gravely disabled as defined by Welfare and Institutions Code section 5008(h)(1)(A). The proposed rule suggests this evaluation be conducted as part of the initial competency examination to increase efficiencies and streamline procedures, when appropriate, by having one court-appointed expert provide all the relevant mental health

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<sup>1</sup> Note that Penal Code section 1370.1, which applies to a finding of mental incompetency based on or accompanied by a developmental disability, was not amended, and still applies to both felonies and misdemeanors.

information regarding the defendant, rather than requiring the appointment of a separate expert at a later time.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- In subdivision (f)(2), would the following phrasing be clearer and more accurate than the proposed version?

If the defendant in a felony case is found to be mentally incompetent under Penal Code section 1370 or the defendant in any criminal action is found to be mentally incompetent under section 1370.1 due to a developmental disability, the criminal proceedings remain suspended and the court either:

(A) must issue an order committing the person for restoration treatment under the provisions of the governing statute, or,

(B) in the case of a person eligible for commitment under Penal Code sections 1370 or 1370.01, if the person is found incompetent due to a mental disorder, may consider placing the committed person on a program of diversion under Penal Code section 1001.36, in lieu of commitment.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.130, at pages 4–7

Rule 4.130 of the California Rules of Court would be amended, effective May 16, 2022, to read:

1 **Rule 4.130. Mental competency proceedings**

2  
3 (a)–(c) \* \* \*

4  
5 (d) **Examination of defendant after initiation of mental competency proceedings**

6  
7 (1) \* \* \*

8  
9 (2) Any court-appointed experts must examine the defendant and advise the  
10 court on the defendant’s competency to stand trial. Experts’ reports are to be  
11 submitted to the court, counsel for the defendant, and the prosecution. The  
12 report must include the following:

13  
14 (A)–(E) \* \* \*

15  
16 (F) A list of all sources of information considered by the examiner,  
17 including legal, medical, school, military, regional center, employment,  
18 hospital, and psychiatric records; the evaluations of other experts; the  
19 results of psychological testing; police reports; criminal history; the  
20 statement of the defendant; statements of any witnesses to the alleged  
21 crime; booking information, mental health screenings, and mental  
22 health records following the alleged crime; consultation with the  
23 prosecutor and defendant’s attorney; and any other collateral sources  
24 considered in reaching his or her conclusion; ~~and~~

25  
26 (G) If the defendant is charged with a felony offense, a recommendation, if  
27 possible, for a placement or type of placement or treatment program  
28 that is most appropriate for restoring the defendant to competency; and

29  
30 (H) If the defendant is charged only with a misdemeanor offense, an  
31 opinion based on present clinical impressions and available historical  
32 data as to whether the defendant, regardless of custody status, appears  
33 to be gravely disabled, as defined in Welfare and Institutions Code  
34 section 5008(h)(1)(A).

35  
36 (3) \* \* \*

37  
38 (e) \* \* \*

39  
40 (f) **Posttrial procedure**

41

Rule 4.130 of the California Rules of Court would be amended, effective May 16, 2022, to read:

- 1 (1) If the defendant is found mentally competent, the court must reinstate the  
2 criminal proceedings.  
3
- 4 (2) If the defendant is found to be mentally incompetent in a felony case under  
5 Penal Code section 1370 or any criminal action involving a developmental  
6 disability under section 1370.1, the criminal proceedings remain suspended  
7 and the court ~~must~~ either must issue an order committing the person for  
8 restoration treatment under the provisions of the governing statute, or, in the  
9 case of a person eligible for commitment under Penal Code sections 1370 ~~or~~  
10 ~~1370.01~~, if the person is found incompetent because of a mental disorder,  
11 may consider placing the ~~committed~~ person on a program of diversion under  
12 Penal Code section 1001.36, in lieu of commitment.  
13
- 14 (3) If the defendant is found to be mentally incompetent in a misdemeanor case  
15 under Penal Code section 1370.01, the criminal proceedings remain  
16 suspended, and the court may dismiss the case under section 1385 or conduct  
17 a hearing to consider placing the person on a program of diversion under  
18 Penal Code section 1001.36.  
19

20 (g) **Diversion of a person eligible for commitment under section 1370 or 1370.01**  
21 **Reinstatement of felony proceedings under Penal Code section 1001.36(d)**  
22

- 23 (1) ~~After the court finds that the defendant is mentally incompetent and before~~  
24 ~~the defendant is transported to a facility for restoration under section~~  
25 ~~1370(a)(1)(B)(i), the court may consider whether the defendant may benefit~~  
26 ~~from diversion under Penal Code section 1001.36. The court may set a~~  
27 ~~hearing to determine whether the defendant is an appropriate candidate for~~  
28 ~~diversion. When determining whether to exercise its discretion to grant~~  
29 ~~diversion under this section, the court may consider previous records of~~  
30 ~~participation in diversion under section 1001.36.~~  
31
- 32 (2) ~~The maximum period of diversion after a finding that the defendant is~~  
33 ~~incompetent to stand trial is the lesser of two years or the maximum time for~~  
34 ~~restoration under Penal Code section 1370(e)(1) (for felony offenses) or~~  
35 ~~1370.01(e)(1) (for misdemeanor offenses).~~  
36
- 37 (3) ~~The court may not condition a grant of diversion for defendant found to be~~  
38 ~~incompetent on either:~~  
39
- 40 (A) ~~The defendant's consent to diversion, either personally, or through~~  
41 ~~counsel; or~~  
42

Rule 4.130 of the California Rules of Court would be amended, effective May 16, 2022, to read:

1           ~~(B) A knowing and intelligent waiver of the defendant's statutory right to a~~  
2           ~~speedy trial, either personally, or through counsel.~~

3  
4           ~~(4) A finding that the defendant suffers from a mental health disorder or~~  
5           ~~disorders rendering the defendant eligible for diversion, any progress reports~~  
6           ~~concerning the defendant's treatment in diversion, or any other records~~  
7           ~~related to a mental health disorder or disorders that were created as a result of~~  
8           ~~participation in, or completion of, diversion or for use at a hearing on the~~  
9           ~~defendant's eligibility for diversion under this section, may not be used in~~  
10           ~~any other proceeding without the defendant's consent, unless that information~~  
11           ~~is relevant evidence that is admissible under the standards described in article~~  
12           ~~I, section 28(f)(2) of the California Constitution.~~

13  
14           ~~(5) If a defendant eligible for commitment under Penal Code section 1370 is granted~~  
15           ~~diversion under Penal Code section 1001.36, and during the period of diversion, the~~  
16           ~~court determines that criminal proceedings should be reinstated under Penal Code~~  
17           ~~section 1001.36(d), the court must, under Penal Code section 1369, appoint a~~  
18           ~~psychiatrist, licensed psychologist, or any other expert the court may deem~~  
19           ~~appropriate, to examine the defendant and return a report, opining on the~~  
20           ~~defendant's competence to stand trial. The expert's report must be provided to~~  
21           ~~counsel for the People and to the defendant's counsel.~~

22  
23           ~~(A)(1)-(2) \* \* \*~~

24  
25           ~~(C)(3) If the court finds by a preponderance of the evidence that the defendant~~  
26           ~~is mentally incompetent, criminal proceedings must remain suspended, and~~  
27           ~~the court must order that the defendant be committed, under Penal Code~~  
28           ~~section 1370 (for felonies) or 1370.01 (for misdemeanors), and placed for~~  
29           ~~restoration treatment.~~

30  
31           ~~(D)(4) If the court concludes, based on substantial evidence, that the defendant~~  
32           ~~is mentally incompetent and is not likely to attain competency within the time~~  
33           ~~remaining before the defendant's maximum date for returning to court, and~~  
34           ~~has reason to believe the defendant may be gravely disabled, within the~~  
35           ~~meaning of Welfare and Institutions Code section 5008(h)(1), the court may,~~  
36           ~~instead of issuing a commitment order under Penal Code sections 1370 or~~  
37           ~~1370.01, refer the matter to the conservatorship investigator of the county of~~  
38           ~~commitment to initiate conservatorship proceedings for the defendant under~~  
39           ~~Welfare and Institutions Code section 5350 et seq.~~

40  
41           ~~(6) If the defendant performs satisfactorily and completes diversion, the case~~  
42           ~~must be dismissed under the procedures stated in Penal Code section~~

Rule 4.130 of the California Rules of Court would be amended, effective May 16, 2022, to read:

~~1001.36, and the defendant must no longer be deemed incompetent to stand trial.~~

**(h) Posttrial hearings on competence under Penal Code section 1370**

(1) \* \* \*

(2) On receipt of ~~the an~~ evaluation report under (h)(1) or an evaluation by the State Department of State Hospitals, under Welfare and Institutions Code section 4335.2, the court must direct the clerk to serve a copy on counsel for the People and counsel for the defendant. If, in the opinion of the appointed expert or the department's expert, the defendant has regained competence, the court must conduct a hearing, as if a certificate of restoration of competence had been filed under Penal Code section 1372(a)(1), except that a presumption of competency does not apply. At the hearing, the court may consider any evidence, presented by any party, ~~which that~~ that is relevant to the question of the defendant's current mental competency.

(A)–(C) \*\*\*