



# Judicial Council of California

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## INVITATION TO COMMENT

### SPR25-13

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**Title**

Criminal Law: Mental Competency Proceedings

**Action Requested**

Review and submit comments by May 23, 2025

**Proposed Rules, Forms, Standards, or Statutes**

Adopt Cal. Rules of Court, rules 4.132 and 4.133; amend rules 4.130 and 4.131

**Proposed Effective Date**

January 1, 2026

**Proposed by**

Criminal Law Advisory Committee  
Hon. Lisa Rodriguez, Chair

**Contact**

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### Executive Summary and Origin

Statutes on competency to stand trial in felony and misdemeanor cases were recently amended to provide courts with additional treatment-based solutions for defendants found incompetent to stand trial and to streamline mental competency proceedings.

The Criminal Law Advisory Committee proposes adopting California Rules of Court, rule 4.132, amending rule 4.130, amending rule 4.131, and renumbering former rule 4.131 as new rule 4.133 to implement these legislative changes, as well as additional amendments to clarify procedures, remove language duplicative of statute, and improve organization, clarity, and concision.

### Background

California Rules of Court, rule 4.130 was adopted effective January 1, 2007, to provide for uniformity and fidelity to the legal requirements of mental competency proceedings by clarifying the appropriate and necessary procedures and bringing together the statutory and case law authorities in a logical and sequential manner.<sup>1</sup> The rule has been amended several times in

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<sup>1</sup> See Judicial Council of Cal., Advisory Com. Rep., *Criminal Cases: Rules Governing Mental Competency Proceedings in Superior Court* (Aug. 31, 2006), p. 1.

*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 It is circulated for comment purposes only.*

recent years, largely to implement statutory changes, but has not undergone significant structural amendments aimed at increasing accessibility and utility.

Effective January 1, 2025, Senate Bill 1323 (Stats. 2024, ch. 646) amended several statutes addressing a defendant’s competency to stand trial. The amendments include streamlining mental competency proceedings and, in felony cases, requiring courts to determine whether it is in the interests of justice to restore a defendant to competence.<sup>2</sup> If the court finds that restoring the person to mental competence is not in the interests of justice, the court must hold a hearing on the defendant’s eligibility for mental health diversion.<sup>3</sup> If the defendant is ineligible for diversion or if diversion is terminated unsuccessfully, the legislation provides for additional treatment-based solutions, as well as the option to reinstate competency proceedings.<sup>4</sup>

Effective January 1, 2025, Senate Bill 1400 (Stats. 2024, ch. 647) amended Penal Code section 1370.01 on misdemeanor competency to stand trial proceedings to state that if a defendant is found mentally incompetent and proceedings are suspended, the court must conduct a hearing on eligibility for mental health diversion.<sup>5</sup> The Legislature’s stated intent is for the court to consider all treatment options as provided in section 1370.01 before dismissing criminal charges, without limiting the court’s discretion under Penal Code section 1385.<sup>6</sup>

## **The Proposal**

The Criminal Law Advisory Committee proposes, effective January 1, 2026, the following amendments to implement recent legislation on mental competency proceedings, clarify procedures, and improve the rules’ accessibility.

### **Rule 4.130**

The committee proposes reorganizing and streamlining rule 4.130 and removing provisions that are duplicative of statute, are more appropriate for a practice guide or treatise, or have limited utility. These amendments include the removal of provisions on the mental competency trial, posttrial procedure, reinstatement of felony proceedings under section 1001.36, and related advisory committee comments. These proposed deletions are not based on a change in or repeal of the statutes and case law supporting those provisions. The committee also proposes moving several provisions to other rules, as explained in more detail below. These proposed changes to rule 4.130 include:

- Moving subdivision (a)(2) and (3) to rule 4.131(a);
- Moving subdivision (d) to rule 4.131(b), with revisions;

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<sup>2</sup> Pen. Code, § 1370(a)(1)(B)(i)(I). All further statutory references are to the Penal Code unless otherwise specified.

<sup>3</sup> § 1370(a)(1)(B)(iii).

<sup>4</sup> § 1370(a)(1)(B)(iii)(III).

<sup>5</sup> § 1370.01(b)(1)(A).

<sup>6</sup> § 1370.01(e).

- Deleting subdivisions (e), (f), and (g) to remove provisions duplicative of statute and to simplify the rule;
- Moving subdivision (h) to proposed new rule 4.132, with revisions;
- Moving the advisory committee comment on experts to rule 4.131; and
- Deleting the advisory committee comments on the use of defendant’s statements made during the examination and trial procedure, to simplify the rule.

Additionally, the committee proposes several substantive changes to rule 4.130:

- Amending subdivision (a) to address when the duty to initiate a competency proceeding arises;
- Amending subdivision (b)(2) to clarify that a hearing about counsel’s opinion on the defendant’s mental competency that may reveal attorney-client privileged information is “ex parte” and in camera;
- Amending subdivisions (b) and (c)(2) to streamline existing provisions, clarify requirements and procedures, and remove provisions duplicative of statutory language;
- Amending subdivision (c)(1) to add new statutory language under SB 1323 that criminal proceedings may be reinstated if the defendant is found mentally competent by the court when neither party objects to the competency report under section 1369(c)(1); and
- Adding new subdivision (c)(3) to state that the initiation of competency proceedings, in and of itself, is not grounds to revoke release on OR or modify bail, to address concerns about court practices, as further explained below.

The committee proposes adding subdivision (c)(3) because multiple committee members noted that it was not uncommon for courts to revoke a defendant’s release on OR or modify bail as a matter of course when criminal proceedings are suspended and competency proceedings initiated. Subdivision (c)(3) would prevent this practice by stating that suspending proceedings and initiating competency proceedings, in and of itself, is not grounds to revoke release on OR or modify bail. This provision would not interfere with a court’s ability to increase or reduce the amount of monetary bail if good cause is shown (see § 1289) or the court’s discretion to revoke release on OR with proper review.<sup>7</sup>

### **Rules 4.131 and 4.133**

The committee proposes renumbering current rule 4.131 as new rule 4.133.

The committee proposes replacing the current text of rule 4.131 with the text of current rule 4.130(a)(2), (a)(3), and (d), and amending to implement substantive changes by:

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<sup>7</sup> *In re Annis* (2005) 127 Cal.App.4th 1190, 1199.

- In subdivision (b)(7), requiring an opinion on eligibility for mental health diversion and whether symptoms of the mental health disorder would respond to mental health treatment in a misdemeanor case<sup>8</sup> and upon request by the defense in a felony case;<sup>9</sup>
- In subdivision (b)(6), requiring, in a felony case, an opinion on the likelihood of the defendant attaining competency and on the benefits or necessity of treatment with antipsychotic or other medication;<sup>10</sup>
- In subdivision (b)(8), on whether cause exists to suspect that the defendant may have a developmental disability, to assist courts with properly referring defendants with a developmental disability to the procedures under Penal Code section 1370.1; and<sup>11</sup>
- In subdivision (b)(9), requiring an opinion on whether the defendant in a felony case may be gravely disabled as defined in statute, as explained further below.<sup>12</sup>

As discussed above, the committee proposes revising subdivision (b)(9) to include felony cases. Under current rule 4.130(d)(2)(H), when the defendant is charged only with a misdemeanor offense, the expert is required to provide an opinion on whether the defendant is gravely disabled as defined in statute. This provision allows one court-appointed expert to provide all relevant mental health information instead of requiring appointment of a separate expert at a later time, and allows courts to act swiftly to assist defendants.<sup>13</sup>

Under SB 1323, if a defendant is found incompetent to stand trial in a felony case and the court finds restoration is not in the interests of justice, the court must hold a hearing on eligibility for mental health diversion.<sup>14</sup> If the defendant is found ineligible for mental health diversion or if diversion is terminated unsuccessfully, the court may refer the defendant to the county conservatorship investigator if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1).<sup>15</sup> The committee proposes amending the rule to extend the requirement for an opinion on whether the defendant is gravely disabled to felony cases under the same rationale as misdemeanor cases, allowing the court to timely seek appropriate treatment and referrals for the defendant.

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<sup>8</sup> § 1370.01(b)(1)(A).

<sup>9</sup> § 1369(b)(1)(D).

<sup>10</sup> § 1369(b)(1)(C), (b)(2)(A)–(C).

<sup>11</sup> This provision also supports referrals under Penal Code section 1369(a)(2), which states that “[i]f it is suspected that the defendant has a developmental disability, the court shall appoint the director of the regional center” for examination.

<sup>12</sup> § 1370(a)(1)(B)(iii)(III)(ic).

<sup>13</sup> See Judicial Council of Cal., Advisory Com. Rep., *Criminal Procedure: Mental Competency Proceedings* (Apr. 18, 2022), p. 5, <https://jcc.legistar.com/View.ashx?M=F&ID=10816478&GUID=8D1DBF4B-FFD5-4289-A453-4E3FC60CF272>.

<sup>14</sup> § 1370(a)(1)(B)(iii).

<sup>15</sup> § 1370(a)(1)(B)(iii)(III)(ic).

The committee proposes the following revisions aimed at simplifying and streamlining the rule:

- Removing current rule 4.130(d)(2)(F) on the list of sources considered by the examiner and replacing with an abbreviated list in subdivision (b)(2);
- Removing current rule 4.130(d)(3) on the use of statements made by the defendant during the examination from rule 4.131, to simplify the rule;
- Splitting current rule 4.130(d)(2)(B) into subdivision (b)(2) on the examination summary and subdivision (b)(4) on current diagnoses applicable to the defendant;
- Amending current rule 4.130(d)(2)(D) to simplify language on malingering or feigning symptoms; and
- Removing current rule 4.130(d)(2)(G) from rule 4.131. Under the current rule, in a felony case, the expert’s report must include a recommendation, if possible, for a placement that is most appropriate for restoring the defendant to competency. The committee proposes removing the placement recommendation because it is often not within the expert’s scope of knowledge and is not necessary for the report.

#### **Rule 4.132**

The committee proposes adopting rule 4.132, which consists of current rule 4.130(h), with amendments to replace “regained” competence with “attained” competence, to reflect changes made to Penal Code section 1370 by SB 1323.

#### **Alternatives Considered**

The committee did not consider the alternative of not amending the rules because it determined that revisions were necessary to implement new legislation. To the extent the proposed revisions were not required by the terms of the legislation, the committee considered taking no action but ultimately determined the revisions were warranted in light of the benefits the revisions would provide to the courts and court users.

The committee initially discussed amending rule 4.130 to simply reflect changes under SB 1323 and SB 1400, without undertaking further amendments addressed at improving the rule’s accessibility. However, the committee agreed that the rule had become dense and difficult to navigate due to piecemeal amendments implementing legislative changes in recent years, and decided to propose further structural amendments.

Some committee members were concerned about the authority to include the provision in rule 4.130(c)(3) about not revoking release on OR or modifying bail when criminal proceedings were suspended, and whether it could be misinterpreted as preventing a judge from revoking release on one’s OR or modifying bail in appropriate circumstances. To address these concerns, the committee modified the provision to add that suspension of criminal proceedings “in and of itself” was insufficient to distinguish the practice of revoking release on OR or modifying bail as a matter of course with a process in line with existing law.

## Fiscal and Operational Impacts

The proposed amendments to rule 4.131 regarding the contents of the expert's report include several changes based on legislation, including:

- In a felony proceeding, providing an opinion on whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future, with consideration as to the possible benefits of treatment with antipsychotic medication, whether treatment with antipsychotic or other medication is necessary to restore the defendant to competency, and whether defendant has capacity to make decisions regarding antipsychotic medication;<sup>16</sup>
- Providing an opinion on eligibility for mental health diversion in all misdemeanor cases<sup>17</sup> and upon request by the defense in a felony case;<sup>18</sup> and
- Expanding the current provision on providing an opinion in a misdemeanor case on whether the defendant appears to be gravely disabled to apply to felony cases.<sup>19</sup>

While these requirements are largely identical or similar to existing requirements in rule 4.130(d), the committee anticipates that some of the legislative changes may require a court-appointed expert to conduct further evaluation of a defendant and provide greater detail in the expert report, which may result in greater costs to some courts depending on how they pay for court-appointed experts.

Proposed amendments to streamline and simplify the contents of the expert's report are not intended to have a fiscal impact. The committee seeks specific comments on whether there are any unintended fiscal impacts from these amendments, such as whether the revised language on an assessment on malingering should retain language that the assessment is clinically indicated, or whether the revised language on providing a diagnosis should retain language indicating a diagnosis "if possible."

The committee does not anticipate additional fiscal impacts from the rule revisions.

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<sup>16</sup> § 1369(b)(1)(C), (b)(2)(A)–(C).

<sup>17</sup> § 1370.01(b)(1)(A).

<sup>18</sup> § 1369(b)(1)(D).

<sup>19</sup> § 1370(a)(1)(B)(iii)(III)(ic).

### **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?
- Do any of the committee's proposed amendments to rule 4.131 to streamline and simplify the expert's report have an unintended fiscal impact?

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?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rules 4.130, 4.131, 4.132, and 4.133, at pages 8–19
2. Link A: Sen. Bill 1323,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB1323](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1323)
3. Link B: Sen. Bill 1400,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB1400](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1400)

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1 **Rule 4.130. Mental competency proceedings**

2  
3 **(a) Application**

4  
5 (1) ~~This rule applies to proceedings in the superior court under Penal Code~~  
6 ~~section 1367 et seq. to determine the mental competency of a criminal~~  
7 ~~defendant.~~

8  
9 (2) ~~The requirements of subdivision (d)(2) apply only to a formal competency~~  
10 ~~evaluation ordered by the court under Penal Code section 1369(a).~~

11  
12 (3) ~~The requirements of subdivision (d)(2) do not apply to a brief preliminary~~  
13 ~~evaluation of the defendant's competency if:~~

14  
15 (A) ~~The parties stipulate to a brief preliminary evaluation; and~~

16  
17 (B) ~~The court orders the evaluation in accordance with a local rule of court~~  
18 ~~that specifies the content of the evaluation and the procedure for its~~  
19 ~~preparation and submission to the court.~~

20  
21 The duty to initiate a competency proceeding may arise at any time before  
22 judgment, and after judgment in a proceeding to revoke probation, mandatory  
23 supervision, postrelease community supervision, or parole.

24  
25 **(b) Initiation of mental competency proceedings**

26  
27 (1) ~~The court must initiate mental competency proceedings if the judge has a~~  
28 ~~reasonable doubt, based on substantial evidence, about the defendant's~~  
29 ~~competence to stand trial. If the court has a reasonable doubt based on~~  
30 ~~substantial evidence that the defendant, due to a mental disorder or~~  
31 ~~developmental disability, is incapable of understanding the nature of the~~  
32 ~~proceedings against them or of rationally assisting in their defense, the court~~  
33 ~~must suspend criminal proceedings and commence competency proceedings.~~

34  
35 (2) The opinion of counsel, without a statement of specific reasons supporting  
36 that opinion, does not constitute substantial evidence. The court may allow  
37 defense counsel to present ~~his or her~~ their opinion regarding the defendant's  
38 mental competency ex parte and in camera if the court finds there is reason to  
39 believe that attorney-client privileged information will be inappropriately  
40 revealed if the hearing is conducted in open court.

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

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~~(3) In a felony case, if the judge initiates mental competency proceedings prior to the preliminary examination, counsel for the defendant may request a preliminary examination as provided in Penal Code section 1368.1(a)(1), or counsel for the People may request a determination of probable cause as provided in Penal Code section 1368.1(a)(2) and rule 4.131.~~

**(c) Effect of initiating mental competency proceedings**

(1) ~~If mental competency proceedings are initiated, criminal proceedings are suspended and may not be reinstated until a trial on the competency of the defendant has been concluded and the defendant is found mentally competent at a trial conducted under Penal Code section 1369, by the court under section 1369(c)(1) when neither party objects to the competency report, at a hearing conducted under Penal Code section 1370(a)(1)(G)(I) or at a hearing following a certification of restoration under Penal Code section 1372.~~

(2) ~~In misdemeanor cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and trial. If criminal proceedings are later reinstated and time is not waived, the trial must be commenced within 30 days after the reinstatement of the criminal proceedings, as provided by Penal Code section 1382(a)(3). Statutory requirements governing the time in which hearings must occur in the underlying criminal proceeding are tolled from the date on which criminal proceedings are suspended until the date on which criminal proceedings are reinstated. Upon reinstatement of criminal proceedings, unless waived by the defendant, all statutory time periods in which proceedings are required to occur are applicable, regardless of whether such time was waived by the defendant before the initiation of competency proceedings.~~

(3) ~~In felony cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and trial. If criminal proceedings are reinstated, unless time is waived, time periods to commence the preliminary examination or trial are as follows: The fact that criminal proceedings have been suspended and that competency proceedings have been initiated, in and of itself, is not grounds to revoke the defendant's own recognizance status or to modify a previous bail order.~~

(A) ~~If criminal proceedings were suspended before the preliminary hearing had been conducted, the preliminary hearing must be commenced~~

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1                   within 10 days of the reinstatement of the criminal proceedings, as  
2                   provided in Penal Code section 859b.

3  
4                   (B) ~~If criminal proceedings were suspended after the preliminary hearing~~  
5                   ~~had been conducted, the trial must be commenced within 60 days of the~~  
6                   ~~reinstatement of the criminal proceedings, as provided in Penal Code~~  
7                   ~~section 1382(a)(2).~~

8  
9                   **(d) Examination of defendant after initiation of mental competency proceedings**

10  
11                   (1) ~~On initiation of mental competency proceedings, the court must inquire~~  
12                   ~~whether the defendant, or defendant's counsel, seeks a finding of mental~~  
13                   ~~incompetence.~~

14  
15                   (2) ~~Any court appointed experts must examine the defendant and advise the~~  
16                   ~~court on the defendant's competency to stand trial. Experts' reports are to be~~  
17                   ~~submitted to the court, counsel for the defendant, and the prosecution. The~~  
18                   ~~report must include the following:~~

19  
20                   (A) ~~A brief statement of the examiner's training and previous experience as~~  
21                   ~~it relates to examining the competence of a criminal defendant to stand~~  
22                   ~~trial and preparing a resulting report;~~

23  
24                   (B) ~~A summary of the examination conducted by the examiner on the~~  
25                   ~~defendant, including a summary of the defendant's mental status, a~~  
26                   ~~diagnosis under the most recent version of the *Diagnostic and*~~  
27                   ~~*Statistical Manual of Mental Disorders*, if possible, of the defendant's~~  
28                   ~~current mental health disorder or disorders, and a statement as to~~  
29                   ~~whether symptoms of the mental health disorder or disorders which~~  
30                   ~~motivated the defendant's behavior would respond to mental health~~  
31                   ~~treatment;~~

32  
33                   (C) ~~A detailed analysis of the competence of the defendant to stand trial~~  
34                   ~~using California's current legal standard, including the defendant's~~  
35                   ~~ability or inability to understand the nature of the criminal proceedings~~  
36                   ~~or assist counsel in the conduct of a defense in a rational manner as a~~  
37                   ~~result of a mental health disorder;~~

38  
39                   (D) ~~A summary of an assessment—conducted for malingering or feigning~~  
40                   ~~symptoms, if clinically indicated—which may include, but need not be~~  
41                   ~~limited to, psychological testing;~~

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

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~~(E) Under Penal Code section 1369, a statement on whether treatment with antipsychotic or other medication is medically appropriate for the defendant and whether the defendant has capacity to make decisions regarding antipsychotic or other medication as outlined in Penal Code section 1370. If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, the psychologist's opinion must be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion must not exceed the scope of their license. If a psychiatrist examines the defendant and opines that treatment with antipsychotic medication is appropriate, the psychiatrist must inform the court of their opinion as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments, as outlined in Penal Code section 1370;~~

~~(F) A list of all sources of information considered by the examiner, including legal, medical, school, military, regional center, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; police reports; criminal history; statement of the defendant; statements of any witnesses to the alleged crime; booking information, mental health screenings, and mental health records following the alleged crime; consultation with the prosecutor and defendant's attorney; and any other collateral sources considered by the examiner in reaching a conclusion;~~

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

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

~~(3) Statements made by the defendant during the examination to experts appointed under this rule, and products of any such statements, may not be used in a trial on the issue of the defendant's guilt or in a sanity trial should defendant enter a plea of not guilty by reason of insanity.~~

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1  
2 **(e) Trial on mental competency**

3  
4 (1) ~~Regardless of the conclusions or findings of the court-appointed expert, the~~  
5 ~~court must conduct a trial on the mental competency of the defendant if the~~  
6 ~~court has initiated mental competency proceedings under (b).~~

7  
8 (2) ~~At the trial, the defendant is presumed to be mentally competent, and it is the~~  
9 ~~burden of the party contending that the defendant is not mentally competent~~  
10 ~~to prove the defendant's mental incompetence by a preponderance of the~~  
11 ~~evidence.~~

12  
13 (3) ~~In addition to the testimony of the experts appointed by the court under (d),~~  
14 ~~either party may call additional experts or other relevant witnesses.~~

15  
16 (4) ~~After the presentation of the evidence and closing argument, the trier of fact~~  
17 ~~is to determine whether the defendant is mentally competent or mentally~~  
18 ~~incompetent.~~

19  
20 (A) ~~If the matter is tried by a jury, the verdict must be unanimous.~~

21  
22 (B) ~~If the parties have waived the right to a jury trial, the court's findings~~  
23 ~~must be made in writing or placed orally in the record.~~

24  
25 **(f) Posttrial procedure**

26  
27 (1) ~~If the defendant is found mentally competent, the court must reinstate the~~  
28 ~~criminal proceedings.~~

29  
30 (2) ~~If the defendant in a felony case is found to be mentally incompetent under~~  
31 ~~section 1370 or the defendant in any criminal action is found to be mentally~~  
32 ~~incompetent under section 1370.1 due to a developmental disability, the~~  
33 ~~criminal proceedings remain suspended and the court either:~~

34  
35 (A) ~~Must issue an order committing the person for restoration treatment~~  
36 ~~under the provisions of the governing statute; or~~

37  
38 (B) ~~In the case of a person eligible for commitment under sections 1370, if~~  
39 ~~the person is found incompetent due to a mental disorder, may consider~~  
40 ~~placing the person on a program of diversion under section 1001.36 in~~  
41 ~~lieu of commitment.~~

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

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~~(3) If the defendant is found to be mentally incompetent in a misdemeanor case under section 1370.01, the criminal proceedings remain suspended, and the court may dismiss the case under section 1385 or conduct a hearing to consider placing the person on a program of diversion under section 1001.36~~

**~~(g) Reinstatement of felony proceedings under section 1001.36(g)~~**

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

~~(1) On receipt of the evaluation report, the court must conduct an inquiry into the defendant's current competency, under the procedures set forth in (h)(2) of this rule.~~

~~(2) If the court finds by a preponderance of the evidence that the defendant is mentally competent, the court must hold a hearing as set forth in Penal Code section 1001.36(g).~~

~~(3) If the court finds by a preponderance of the evidence that the defendant is mentally incompetent, criminal proceedings must remain suspended, and the court must order that the defendant be committed and placed for restoration treatment.~~

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

**~~(h) Posttrial hearings on competence under section 1370~~**

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

- 1           (1) ~~If, at any time after the court has declared a defendant incompetent to stand~~  
2 ~~trial, and counsel for the defendant, or a jail medical or mental health staff~~  
3 ~~provider, provides the court with substantial evidence that the defendant’s~~  
4 ~~psychiatric symptoms have changed to such a degree as to create a doubt in~~  
5 ~~the mind of the judge as to the defendant’s current mental incompetence, the~~  
6 ~~court may appoint a psychiatrist or a licensed psychologist to examine the~~  
7 ~~defendant and, in an examination with the court, opine as to whether the~~  
8 ~~defendant has regained competence.~~  
9
- 10           (2) ~~On receipt of an evaluation report under (h)(1) or an evaluation by the State~~  
11 ~~Department of State Hospitals under Welfare and Institutions Code section~~  
12 ~~4335.2, the court must direct the clerk to serve a copy on counsel for the~~  
13 ~~People and counsel for the defendant. If, in the opinion of the appointed~~  
14 ~~expert or the department’s expert, the defendant has regained competence,~~  
15 ~~the court must conduct a hearing, as if a certificate of restoration of~~  
16 ~~competence had been filed under section 1372(a)(1). At the hearing, the court~~  
17 ~~may consider any evidence, presented by any party, that is relevant to the~~  
18 ~~question of the defendant’s current mental competency.~~  
19
- 20           (A) ~~At the conclusion of the hearing, if the court finds that it has been~~  
21 ~~established by a preponderance of the evidence that the defendant is~~  
22 ~~mentally competent, the court must reinstate criminal proceedings.~~  
23
- 24           (B) ~~At the conclusion of the hearing, if the court finds that it has not been~~  
25 ~~established by a preponderance of the evidence that the defendant is~~  
26 ~~mentally competent, criminal proceedings must remain suspended.~~  
27
- 28           (C) ~~The court’s findings on the defendant’s mental competency must be~~  
29 ~~stated on the record and recorded in the minutes.~~  
30

### Advisory Committee Comment

33 The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to  
34 follow in cases ~~where~~ in which there is a concern whether the defendant is legally competent to  
35 stand trial, but the concern does not necessarily rise to the level of a reasonable doubt based on  
36 substantial evidence. Before finding a reasonable doubt as to the defendant’s competency to stand  
37 trial and initiating competency proceedings under Penal Code section 1368 et seq., the court may  
38 appoint an expert to assist the court in determining whether such a reasonable doubt exists. As  
39 noted in *People v. Visciotti* (1992) 2 Cal.4th 1, 34–36, the court may appoint an expert when it is  
40 concerned about the mental competency of the defendant, but the concern does not rise to the  
41 level of a reasonable doubt, based on substantial evidence, required by Penal Code section 1367

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1 et seq. Should the results of this examination present substantial evidence of mental  
2 incompetency, the court must initiate competency proceedings under (b).

3  
4 ~~Once mental competency proceedings under Penal Code section 1367 et seq. have been initiated,~~  
5 ~~the court is to appoint at least one expert to examine the defendant under (d). Under no~~  
6 ~~circumstances is the court obligated to appoint more than two experts. (Pen. Code, § 1369(a).)~~  
7 ~~The costs of the experts appointed under (d) are to be paid for by the court as the expert~~  
8 ~~examinations and reports are for the benefit or use of the court in determining whether the~~  
9 ~~defendant is mentally incompetent. (See Cal. Rules of Court, rule 10.810, function 10.)~~

10  
11 ~~Subdivision (d)(3), which provides that the defendant’s statements made during the examination~~  
12 ~~cannot be used in a trial on the defendant’s guilt or a sanity trial in a not guilty by reason of sanity~~  
13 ~~trial, is based on the California Supreme Court holdings in *People v. Arcega* (1982) 32 Cal.3d~~  
14 ~~504 and *People v. Weaver* (2001) 26 Cal.4th 876.~~

15  
16 ~~Although the court is not obligated to appoint additional experts, counsel may nonetheless retain~~  
17 ~~their own experts to testify at a trial on the defendant’s competency. (See *People v. Mayes* (1988)~~  
18 ~~202 Cal.App.4th 908, 917–918.) These experts are not for the benefit or use of the court, and their~~  
19 ~~costs are not to be paid by the court. (See Cal. Rules of Court, rule 10.810, function 10.)~~

20  
21 ~~Both the prosecution and the defense have the right to a jury trial. (See *People v. Superior Court*~~  
22 ~~(*McPeters*) (1995) 169 Cal.App.3d 796.) Defense counsel may waive this right, even over the~~  
23 ~~objection of the defendant. (*People v. Masterson* (1994) 8 Cal.4th 965, 970.)~~

24  
25 ~~Either defense counsel or the prosecution (or both) may argue that the defendant is not competent~~  
26 ~~to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel may advocate that~~  
27 ~~defendant is not competent to stand trial and may present evidence of defendant’s mental~~  
28 ~~incompetency regardless of defendant’s desire to be found competent].) If the defense declines to~~  
29 ~~present evidence of the defendant’s mental incompetency, the prosecution may do so. (Pen. Code,~~  
30 ~~§ 1369(b)(2).) If the prosecution elects to present evidence of the defendant’s mental~~  
31 ~~incompetency, it is the prosecution’s burden to prove the incompetency by a preponderance of the~~  
32 ~~evidence. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1484, fn. 12.)~~

33  
34 ~~Should both parties decline to present evidence of defendant’s mental incompetency, the court~~  
35 ~~may do so. In those cases, the court is not to instruct the jury that a party has the burden of proof.~~  
36 ~~“Rather, the proper approach would be to instruct the jury on the legal standard they are to apply~~  
37 ~~to the evidence before them without allocating the burden of proof to one party or the other.”~~  
38 ~~(*People v. Sherik* (1991) 229 Cal.App.3d 444, 459–460.)~~

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1 **Rule 4.131. Evaluation of defendant after initiation of mental competency**  
2 **proceedings**

3  
4 **(a) Application**

5  
6 The requirements of (b) of this rule apply only to a formal competency evaluation  
7 ordered by the court under section 1369(a). They do not apply to a brief  
8 preliminary evaluation of the defendant's competency if:

9  
10 (1) The parties stipulate to a brief preliminary evaluation; and

11  
12 (2) The court orders the evaluation in accordance with a local rule of court that  
13 specifies the content of the evaluation and the procedure for its preparation  
14 and submission to the court.

15  
16 **(b) Examination of defendant**

17  
18 A court-appointed expert or experts must examine the defendant, review the  
19 records provided, and, in a report filed with the court and made available to counsel  
20 for the defendant and the prosecution, opine as to whether the defendant is  
21 currently competent to stand trial. The expert's report must include the following:

22  
23 (1) A brief statement of the examiner's training and previous experience as it  
24 relates to examining the competence of a criminal defendant to stand trial and  
25 preparing a resulting report;

26  
27 (2) A summary of the examination conducted by the examiner on the defendant,  
28 including statements made by the defendant during that examination, and a  
29 list of the records, digital media, and other information reviewed and  
30 considered by the examiner;

31  
32 (3) A detailed analysis of the competence of the defendant to stand trial using  
33 California's current legal standard, including the defendant's ability or  
34 inability to understand the nature of the criminal proceedings or assist  
35 counsel in the conduct of a defense in a rational manner as a result of a  
36 mental health disorder;

37  
38 (4) An analysis of all current diagnoses under the most recent version of  
39 the *Diagnostic and Statistical Manual of Mental Disorders* applicable to the  
40 defendant, based on the available records and evaluation;



Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1 **Rule 4.132. Posttrial hearings on competence under section 1370**

2  
3 (a) If, at any time after the court has declared a defendant incompetent to stand trial,  
4 and counsel for the defendant, or a jail medical or mental health staff provider,  
5 provides the court with substantial evidence that the defendant’s psychiatric  
6 symptoms have changed to such a degree as to create a doubt in the mind of the  
7 judge as to the defendant’s current mental incompetence, the court may appoint a  
8 psychiatrist or a licensed psychologist to examine the defendant and opine as to  
9 whether the defendant has attained competence.

10  
11 (b) On receipt of an evaluation report under (a) or an evaluation by the State  
12 Department of State Hospitals under Welfare and Institutions Code section 4335.2,  
13 the court must direct the clerk to serve a copy on counsel for the People and  
14 counsel for the defendant. If, in the opinion of the appointed expert or the  
15 department’s expert, the defendant has attained competence, the court must conduct  
16 a hearing, as if a certificate of restoration of competence had been filed under  
17 section 1372(a)(1). At the hearing, the court may consider any evidence, presented  
18 by any party, that is relevant to the question of the defendant’s current mental  
19 competency.

20  
21 (1) At the conclusion of the hearing, if the court finds that it has been established  
22 by a preponderance of the evidence that the defendant is mentally competent,  
23 the court must reinstate criminal proceedings.

24  
25 (2) At the conclusion of the hearing, if the court finds that it has not been  
26 established by a preponderance of the evidence that the defendant is mentally  
27 competent, criminal proceedings must remain suspended.

28  
29 (3) The court’s findings on the defendant’s mental competency must be stated on  
30 the record and recorded in the minutes.

31  
32  
33 **Rule 4.133.4.131. Probable cause determinations under section 1368.1(a)(2)**

34  
35 (a) **Notice of a request for a determination of probable cause**

36  
37 The prosecuting attorney must serve and file notice of a request for a determination  
38 of probable cause on the defense at least 10 court days before the time appointed  
39 for the proceeding.  
40

Rule 4.132 of the California Rules of Court would be adopted, rule 4.130 would be amended, and rule 4.131 would be amended and renumbered as rule 4.133, effective January 1, 2026, to read:

1 **(b) Judge requirement**

2

3 A judge must hear the determination of probable cause unless there is a stipulation  
4 by both parties to having the matter heard by a subordinate judicial officer.

5

6 **(c) Defendant need not be present**

7

8 A defendant need not be present for a determination of probable cause to proceed.

9

10 **(d) Application of section 861**

11

12 The one-session requirement of section 861 does not apply.

13

14 **(e) Transcript**

15

16 A transcript of the determination of probable cause must be provided to the  
17 prosecuting attorney and counsel for the defendant consistent with the manner in  
18 which a transcript is provided in a preliminary examination.

19