



2021 California Rules of Court

Rule 4.130. Mental competency proceedings

(a) Application

- (1) This rule applies to proceedings in the superior court under Penal Code section 1367 et seq. to determine the mental competency of a criminal defendant.
- (2) The requirements of subdivision (d)(2) apply only to a formal competency evaluation ordered by the court under Penal Code section 1369(a).
- (3) The requirements of subdivision (d)(2) do not apply to a brief preliminary evaluation of the defendant's competency if:
 - (A) The parties stipulate to a brief preliminary evaluation; and
 - (B) The court orders the evaluation in accordance with a local rule of court that specifies the content of the evaluation and the procedure for its preparation and submission to the court.

(Subd (a) amended effective January 1, 2018.)

(b) Initiation of mental competency proceedings

- (1) The court must initiate mental competency proceedings if the judge has a reasonable doubt, based on substantial evidence, about the defendant's competence to stand trial.
- (2) The opinion of counsel, without a statement of specific reasons supporting that opinion, does not constitute substantial evidence. The court may allow defense counsel to present his or her opinion regarding the defendant's mental competency in camera if the court finds there is reason to believe that attorney-client privileged information will be inappropriately revealed if the hearing is conducted in open court.
- (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.

(Subd (b) amended effective January 1, 2020.)

(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, at a hearing conducted under

Penal Code section 1370(a)(1)(G), 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).
- (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:
 - (A) If criminal proceedings were suspended before the preliminary hearing had been conducted, the preliminary hearing must be commenced within 10 days of the reinstatement of the criminal proceedings, as provided in Penal Code section 859b.
 - (B) If criminal proceedings were suspended after the preliminary hearing had been conducted, the trial must be commenced within 60 days of the reinstatement of the criminal proceedings, as provided in Penal Code section 1382(a)(2).

(Subd (c) amended effective January 1, 2020.)

(d) Examination of defendant after initiation of mental competency proceedings

- (1) On initiation of mental competency proceedings, the court must inquire whether the defendant, or defendant's counsel, seeks a finding of mental incompetence.
- (2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:
 - (A) A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report;
 - (B) A summary of the examination conducted by the examiner on the defendant, including a summary of the defendant's mental status, a diagnosis under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, if possible, of the defendant's current mental health disorder or disorders, and a statement as to whether symptoms of the mental health disorder or disorders which motivated the defendant's behavior would respond to mental health treatment;
 - (C) A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including 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 as a result of a mental health disorder;
 - (D) A summary of an assessment-conducted for malingering or feigning symptoms, if clinically indicated-which may include, but need not be limited to, psychological testing;
 - (E) Under Penal Code section 1369, a statement on whether treatment with antipsychotic or other medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic or other medication in the county jail, and whether the defendant has capacity to make decisions regarding antipsychotic or other medication. If an examining psychologist is of the

opinion that a referral to a psychiatrist is necessary to address these issues, the psychologist must inform the court of this opinion and his or her recommendation that a psychiatrist should examine the defendant;

- (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 in reaching his or her conclusion; and
- (G) A recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency.

- (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.

(Subd (d) amended effective September 1, 2020; previously amended effective January 1, 2018, and January 1, 2020.)

(e) Trial on mental competency

- (1) Regardless of the conclusions or findings of the court-appointed expert, the court must conduct a trial on the mental competency of the defendant if the court has initiated mental competency proceedings under (b).
- (2) At the trial, the defendant is presumed to be mentally competent, and it is the burden of the party contending that the defendant is not mentally competent to prove the defendant's mental incompetence by a preponderance of the evidence.
- (3) In addition to the testimony of the experts appointed by the court under (d), either party may call additional experts or other relevant witnesses.
- (4) After the presentation of the evidence and closing argument, the trier of fact is to determine whether the defendant is mentally competent or mentally incompetent.
 - (A) If the matter is tried by a jury, the verdict must be unanimous.
 - (B) If the parties have waived the right to a jury trial, the court's findings must be made in writing or placed orally in the record.

(f) Posttrial procedure

- (1) If the defendant is found mentally competent, the court must reinstate the criminal proceedings.
- (2) If the defendant is found to be mentally incompetent, the criminal proceedings remain suspended and the court must either issue an order committing the person for restoration treatment under the provisions of the governing statute, or, in the case of a person eligible for commitment under Penal Code sections 1370 or 1370.01, may consider placing the committed person on a program of diversion.

(Subd (f) amended effective January 1, 2020.)

(g) Diversion of a person eligible for commitment under section 1370 or 1370.01

- (1) After the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility for restoration under section 1370(a)(1)(B)(i), the court may consider whether the defendant may benefit from diversion under Penal Code section 1001.36. The court may set a hearing to determine

whether the defendant is an appropriate candidate for diversion. When determining whether to exercise its discretion to grant diversion under this section, the court may consider previous records of participation in diversion under section 1001.36.

- (2) The maximum period of diversion after a finding that the defendant is incompetent to stand trial is the lesser of two years or the maximum time for restoration under Penal Code section 1370(c)(1) (for felony offenses) or 1370.01(c)(1) (for misdemeanor offenses).
- (3) The court may not condition a grant of diversion for defendant found to be incompetent on either:
 - (A) The defendant's consent to diversion, either personally, or through counsel; or
 - (B) A knowing and intelligent waiver of the defendant's statutory right to a speedy trial, either personally, or through counsel.
- (4) A finding that the defendant suffers from a mental health disorder or disorders rendering the defendant eligible for diversion, any progress reports concerning the defendant's treatment in diversion, or any other records related to a mental health disorder or disorders that were created as a result of participation in, or completion of, diversion or for use at a hearing on the defendant's eligibility for diversion under this section, may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in article I, section 28(f)(2) of the California Constitution.
- (5) If, during the period of diversion, the court determines that criminal proceedings should be reinstated under Penal Code section 1001.36(d), the court must, under Penal Code 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.
 - (A) 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.
 - (B) 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(d).
 - (C) 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, under Penal Code section 1370 (for felonies) or 1370.01 (for misdemeanors), and placed for restoration treatment.
 - (D) 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 Penal Code sections 1370 or 1370.01, 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.
- (6) If the defendant performs satisfactorily and completes diversion, the case must be dismissed under the procedures stated in Penal Code section 1001.36, and the defendant must no longer be deemed incompetent to stand trial.

(Subd (g) amended September 1, 2020; adopted effective January 1, 2020.)

(h) Posttrial hearings on competence

- (1) If, at any time after the court has declared a defendant incompetent to stand trial, and counsel for the defendant, or a jail medical or mental health staff provider, provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to examine the defendant and, in an examination with the court, opine as to whether the defendant has regained competence.
- (2) On receipt of the evaluation report, 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, 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 is relevant to the question of the defendant's current mental competency.
 - (A) At the conclusion of the hearing, if the court finds that it has been established by a preponderance of the evidence that the defendant is mentally competent, the court must reinstate criminal proceedings.
 - (B) At the conclusion of the hearing, if the court finds that it has not been established by a preponderance of the evidence that the defendant is mentally competent, criminal proceedings must remain suspended.
 - (C) The court's findings on the defendant's mental competency must be stated on the record and recorded in the minutes.

(Subd (h) adopted effective January 1, 2020.)

Rule 4.130 amended effective September 1, 2020; adopted effective January 1, 2007; previously amended effective January 1, 2018, and January 1, 2020.

Advisory Committee Comment

The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to follow in cases where there is a concern whether the defendant is legally competent to stand trial, but the concern does not necessarily rise to the level of a reasonable doubt based on substantial evidence. Before finding a reasonable doubt as to the defendant's competency to stand trial and initiating competency proceedings under Penal Code section 1368 et seq., the court may appoint an expert to assist the court in determining whether such a reasonable doubt exists. As noted in *People v. Visciotti* (1992) 2 Cal.4th 1, 34-36, the court may appoint an expert when it is concerned about the mental competency of the defendant, but the concern does not rise to the level of a reasonable doubt, based on substantial evidence, required by Penal Code section 1367 et seq. Should the results of this examination present substantial evidence of mental incompetency, the court must initiate competency proceedings under (b).

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

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

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

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

Either defense counsel or the prosecution (or both) may argue that the defendant is not competent to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel may advocate that defendant is not competent to stand trial and may present evidence of defendant's mental incompetency regardless of defendant's desire to be found competent].) If the defense declines to present evidence of

the defendant's mental incompetency, the prosecution may do so. (Pen. Code, § 1369(b)(2).) If the prosecution elects to present evidence of the defendant's mental incompetency, it is the prosecution's burden to prove the incompetency by a preponderance of the evidence. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1484, fn. 12.)

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

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