



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 25-141

For business meeting on October 24, 2025

Title

Criminal Law: Mental Competency
Proceedings

Report Type

Action Required

Effective Date

January 1, 2026

Rules, Forms, Standards, or Statutes Affected

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

Date of Report

September 30, 2025

Recommended by

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

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 recommends adopting, amending, and renumbering rules of court to implement these legislative changes, as well as additional amendments to clarify procedures, remove language duplicative of statute, and improve organization, clarity, and concision.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2026:

1. Adopt California Rules of Court, rule 4.132, which consists of current rule 4.130(h) with minor amendments to reflect changes to Penal Code section 1370 by Senate Bill 1323 (Stats. 2024, ch. 646);
2. Adopt California Rules of Court, rule 4.133, renumbered from current rule 4.131;

3. Amend California Rules of Court, rule 4.130 to implement statutory changes, reorganize and streamline the rule, and remove provisions that are duplicative of statute; and
4. Amend California Rules of Court, rule 4.131 to replace its contents with subdivisions (a)(2), (a)(3), and (d) of current rule 4.130 and to implement statutory changes.

The proposed amended rules are attached at pages 8–18.

Relevant Previous Council Action

California Rules of Court, rule 4.130 on mental competency proceedings 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.¹ The rule has been amended several times in recent years, largely to implement statutory changes, but has not undergone significant structural amendments aimed at increasing accessibility and utility.

California Rules of Court, rule 4.131, was adopted effective January 1, 2019 to implement legislation allowing a prosecuting attorney to request a probable cause determination for a defendant who is incompetent to stand trial in order to meet criteria needed to establish a conservatorship over the defendant.

Analysis/Rationale

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.² 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.³ 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.⁴

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.⁵ The Legislature’s stated intent is for the court to consider

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

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

³ § 1370(a)(1)(B)(iii).

⁴ § 1370(a)(1)(B)(iii)(III).

⁵ § 1370.01(b)(1)(A).

all treatment options as provided in section 1370.01 before dismissing criminal charges, without limiting the court's discretion under section 1385.⁶

To implement these statutory changes, the committee recommends amendments to rules 4.130 and 4.131.

In addition to adopting and amending rules to conform with these statutory changes, the committee recommends amendments to clarify procedures and improve the rules' accessibility through reorganization, including adopting rule 4.132, which consists of current rule 4.130(h), and rule 4.133, renumbered from current rule 4.131.

Proposed rule amendments

Rule 4.130

The committee recommends 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 recommended deletions are not based on a change in or repeal of the statutes and case law supporting those provisions. The committee also recommends moving several provisions to other rules, as explained in more detail below. Following are the recommended changes to rule 4.130:

- Move subdivision (a)(2) and (3) to rule 4.131(a);
- Move subdivision (d) to rule 4.131(b), with revisions;
- Delete subdivisions (e), (f), and (g) as duplicative of statute and to simplify the rule;
- Move subdivision (h) to proposed new rule 4.132, with revisions;
- Move the advisory committee comment on experts to rule 4.131; and
- Delete the advisory committee comments on the use of defendant's statements made during the examination and trial procedure, to simplify the rule and as more appropriate for a practice guide.

Additionally, the committee recommends the following substantive changes to rule 4.130:

- Amend subdivision (a) to address when the duty to initiate a competency proceeding arises;

⁶ § 1370.01(e).

- Amend 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;
- Amend subdivisions (b) and (c)(2) to streamline existing provisions, clarify requirements and procedures, and remove provisions duplicative of statutory language;
- Amend 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
- Add new subdivision (c)(3) to state that the initiation of competency proceedings, in and of itself, is not grounds to revoke release on the defendant’s own recognizance (OR) or modify bail.

Rules 4.131 and 4.133

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

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

- In new subdivision (b)(7), to require 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 case⁷ and upon request by the defense in a felony case;⁸
- In new subdivision (b)(6), to require, 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;⁹
- In new 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 section 1370.1;¹⁰ and
- In new subdivision (b)(9), to require an opinion on whether the defendant in a felony case may be gravely disabled as defined in statute, as explained further below.¹¹

⁷ § 1370.01(b)(1)(A).

⁸ § 1369(b)(1)(D).

⁹ § 1369(b)(1)(C), (b)(2)(A)–(C).

¹⁰ This provision also supports referrals under 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.

¹¹ § 1370(a)(1)(B)(iii)(III)(ic).

As discussed above, the committee recommends revising new 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.¹²

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.¹³ 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).¹⁴ The committee recommends 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.

The committee recommends the following revisions aimed at simplifying and streamlining rule 4.131:

- Remove current rule 4.130(d)(2)(F) on the list of sources considered by the examiner and replace with an abbreviated list in new subdivision (b)(2);
- Remove current rule 4.130(d)(3) on the use of statements made by the defendant during the examination to simplify the rule;
- Divide current rule 4.130(d)(2)(B) into new subdivision (b)(2) on the examination summary and new subdivision (b)(4) on current diagnoses applicable to the defendant;
- Amend current rule 4.130(d)(2)(D) in new subdivision (b)(5) to simplify language on malingering or feigning symptoms; and
- Remove current rule 4.130(d)(2)(G). 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 recommends

¹² 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>.

¹³ § 1370(a)(1)(B)(iii).

¹⁴ § 1370(a)(1)(B)(iii)(III)(ic).

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 recommends adopting rule 4.132, which consists of current rule 4.130(h), with minor amendments to replace “regained” competence with “attained” competence, to reflect changes to section 1370 by SB 1323.

Policy implications

The proposal implements legislative changes. Accordingly, the key policy implication is ensuring that the rules of court reflect the law. These revisions are therefore consistent with *The Strategic Plan for California’s Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

The proposal circulated for comment from April 14 to May 23, 2025. Three comments were received—from the Superior Court of Los Angeles County, the Superior Court of Orange County, and the Orange County Bar Association—and all agreed with the proposal. The committee appreciates the time taken to respond to this proposal. All comments received, and the committees’ responses, are provided in the attached chart of comments at pages 19–21.

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. With respect to the proposed revisions unrelated to the new legislation, the committee considered taking no action but ultimately determined the revisions were warranted in light of the benefits 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 aimed 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 fiscal and operational impacts of this proposal are largely attributable to legislative changes related to the contents of the expert’s report. 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. For example, the Superior Court of Orange County pays a flat fee for an expert evaluation and commented that proposed amended rule 4.131 could lead to a request for increased fees.

The Superior Court of Los Angeles County commented that it was unclear what the fiscal impact of the proposal would be, including whether there could be cost savings, and thought there would likely be minimal staff training, revisions to procedures, or case management modifications.

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

Attachments and Links

1. Cal. Rules of Court, rules 4.130, 4.131, 4.132, and 4.133, at pages 8–18
2. Chart of comments, at pages 19–21
3. Link A: Sen. Bill 1323 (Stats. 2024, ch. 646),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1323
4. Link B: Sen. Bill 1400 (Stats. 2024, ch. 647),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1400

Rules 4.132 and 4.133 of the California Rules of Court are adopted and rules 4.130 and 4.131 are amended, effective January 1, 2026, to read:

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.~~

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

(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.~~ If the court has a reasonable doubt based on substantial evidence that the defendant, due to a mental disorder or developmental disability, is incapable of understanding the nature of the proceedings against them or of rationally assisting in their defense, the court must suspend criminal proceedings and commence competency proceedings.
- (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~~ their opinion regarding the defendant's mental competency ex parte and 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.

- 1 (3) ~~In a felony case, if the judge initiates mental competency proceedings prior to~~
2 ~~the preliminary examination, counsel for the defendant may request a~~
3 ~~preliminary examination as provided in Penal Code section 1368.1(a)(1), or~~
4 ~~counsel for the People may request a determination of probable cause as~~
5 ~~provided in Penal Code section 1368.1(a)(2) and rule 4.131.~~
6

7 (c) **Effect of initiating mental competency proceedings**
8

- 9 (1) If mental competency proceedings are initiated, criminal proceedings are
10 suspended and may not be reinstated until ~~a trial on the competency of the~~
11 ~~defendant has been concluded and the defendant is found mentally competent~~
12 ~~at a trial conducted under Penal Code section 1369, by the court under~~
13 section 1369(c)(1) when neither party objects to the competency report, at a
14 hearing conducted under Penal Code section 1370(a)(1)(G)(I), or at a hearing
15 following a certification of restoration under Penal Code section 1372.
16

- 17 (2) ~~In misdemeanor cases, speedy trial requirements are tolled during the~~
18 ~~suspension of criminal proceedings for mental competency evaluation and~~
19 ~~trial. If criminal proceedings are later reinstated and time is not waived, the~~
20 ~~trial must be commenced within 30 days after the reinstatement of the~~
21 ~~criminal proceedings, as provided by Penal Code section 1382(a)(3).~~
22 Statutory requirements governing the time in which hearings must occur in
23 the underlying criminal proceeding are tolled from the date on which criminal
24 proceedings are suspended until the date on which criminal proceedings are
25 reinstated. Upon reinstatement of criminal proceedings, unless waived by the
26 defendant, all statutory time periods in which proceedings are required to
27 occur are applicable, regardless of whether such time was waived by the
28 defendant before the initiation of competency proceedings.
29

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

- 37
38 (A) ~~If criminal proceedings were suspended before the preliminary hearing~~
39 ~~had been conducted, the preliminary hearing must be commenced~~
40 ~~within 10 days of the reinstatement of the criminal proceedings, as~~
41 ~~provided in Penal Code section 859b.~~
42

(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).~~

(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 and whether the defendant has capacity to make decisions regarding antipsychotic or other medication as outlined in Penal Code~~

1 section 1370. If a licensed psychologist examines the defendant and
2 opines that treatment with antipsychotic medication may be
3 appropriate, the psychologist's opinion must be based on whether the
4 defendant has a mental disorder that is typically known to benefit from
5 that treatment. A licensed psychologist's opinion must not exceed the
6 scope of their license. If a psychiatrist examines the defendant and
7 opines that treatment with antipsychotic medication is appropriate, the
8 psychiatrist must inform the court of their opinion as to the likely or
9 potential side effects of the medication, the expected efficacy of the
10 medication, and possible alternative treatments, as outlined in Penal
11 Code section 1370;

12
13 (F) A list of all sources of information considered by the examiner,
14 including legal, medical, school, military, regional center, employment,
15 hospital, and psychiatric records; the evaluations of other experts; the
16 results of psychological testing; police reports; criminal history;
17 statement of the defendant; statements of any witnesses to the alleged
18 crime; booking information, mental health screenings, and mental
19 health records following the alleged crime; consultation with the
20 prosecutor and defendant's attorney; and any other collateral sources
21 considered by the examiner in reaching a conclusion;

22
23 (G) If the defendant is charged with a felony offense, a recommendation, if
24 possible, for a placement or type of placement or treatment program
25 that is most appropriate for restoring the defendant to competency; and

26
27 (H) If the defendant is charged only with a misdemeanor offense, an
28 opinion based on present clinical impressions and available historical
29 data as to whether the defendant, regardless of custody status, appears
30 to be gravely disabled, as defined in Welfare and Institutions Code
31 section 5008(h)(1)(A).

32
33 (3) Statements made by the defendant during the examination to experts
34 appointed under this rule, and products of any such statements, may not be
35 used in a trial on the issue of the defendant's guilt or in a sanity trial should
36 defendant enter a plea of not guilty by reason of insanity.

37
38 **(e) Trial on mental competency**

39
40 (1) Regardless of the conclusions or findings of the court-appointed expert, the
41 court must conduct a trial on the mental competency of the defendant if the
42 court has initiated mental competency proceedings under (b).

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

5
6 (3) ~~In addition to the testimony of the experts appointed by the court under (d),~~
7 ~~either party may call additional experts or other relevant witnesses.~~

8
9 (4) ~~After the presentation of the evidence and closing argument, the trier of fact~~
10 ~~is to determine whether the defendant is mentally competent or mentally~~
11 ~~incompetent.~~

12
13 (A) ~~If the matter is tried by a jury, the verdict must be unanimous.~~

14
15 (B) ~~If the parties have waived the right to a jury trial, the court's findings~~
16 ~~must be made in writing or placed orally in the record.~~

17
18 (f) **Posttrial procedure**

19
20 (1) ~~If the defendant is found mentally competent, the court must reinstate the~~
21 ~~criminal proceedings.~~

22
23 (2) ~~If the defendant in a felony case is found to be mentally incompetent under~~
24 ~~section 1370 or the defendant in any criminal action is found to be mentally~~
25 ~~incompetent under section 1370.1 due to a developmental disability, the~~
26 ~~criminal proceedings remain suspended and the court either:~~

27
28 (A) ~~Must issue an order committing the person for restoration treatment~~
29 ~~under the provisions of the governing statute; or~~

30
31 (B) ~~In the case of a person eligible for commitment under sections 1370, if~~
32 ~~the person is found incompetent due to a mental disorder, may consider~~
33 ~~placing the person on a program of diversion under section 1001.36 in~~
34 ~~lieu of commitment.~~

35
36 (3) ~~If the defendant is found to be mentally incompetent in a misdemeanor case~~
37 ~~under section 1370.01, the criminal proceedings remain suspended, and the~~
38 ~~court may dismiss the case under section 1385 or conduct a hearing to~~
39 ~~consider placing the person on a program of diversion under section 1001.36~~

40
41 (g) **Reinstatement of felony proceedings under section 1001.36(g)**
42

1 If a defendant eligible for commitment under section 1370 is granted diversion
2 under section 1001.36, and during the period of diversion, the court determines that
3 criminal proceedings should be reinstated under section 1001.36(g), the court must,
4 under section 1369, appoint a psychiatrist, licensed psychologist, or any other
5 expert the court may deem appropriate, to examine the defendant and return a
6 report opining on the defendant's competence to stand trial. The expert's report
7 must be provided to counsel for the People and to the defendant's counsel.
8

9 (1) On receipt of the evaluation report, the court must conduct an inquiry into the
10 defendant's current competency, under the procedures set forth in (h)(2) of
11 this rule.
12

13 (2) If the court finds by a preponderance of the evidence that the defendant is
14 mentally competent, the court must hold a hearing as set forth in Penal Code
15 section 1001.36(g).
16

17 (3) If the court finds by a preponderance of the evidence that the defendant is
18 mentally incompetent, criminal proceedings must remain suspended, and the
19 court must order that the defendant be committed and placed for restoration
20 treatment.
21

22 (4) If the court concludes, based on substantial evidence, that the defendant is
23 mentally incompetent and is not likely to attain competency within the time
24 remaining before the defendant's maximum date for returning to court, and
25 has reason to believe the defendant may be gravely disabled, within the
26 meaning of Welfare and Institutions Code section 5008(h)(1), the court may,
27 instead of issuing a commitment order under section 1370, refer the matter to
28 the conservatorship investigator of the county of commitment to initiate
29 conservatorship proceedings for the defendant under Welfare and Institutions
30 Code section 5350 et seq.
31

32 **(h) Posttrial hearings on competence under section 1370**
33

34 (1) If, at any time after the court has declared a defendant incompetent to stand
35 trial, and counsel for the defendant, or a jail medical or mental health staff
36 provider, provides the court with substantial evidence that the defendant's
37 psychiatric symptoms have changed to such a degree as to create a doubt in
38 the mind of the judge as to the defendant's current mental incompetence, the
39 court may appoint a psychiatrist or a licensed psychologist to examine the
40 defendant and, in an examination with the court, opine as to whether the
41 defendant has regained competence.
42

(2) On receipt of 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 section 1372(a)(1). At the hearing, the court may consider any evidence, presented by any party, that 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.~~

Advisory Committee Comment

The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to follow in cases where in which 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.)

Rule 4.131. Evaluation of defendant after initiation of mental competency proceedings

(a) Application

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

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

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

4
5 **(b) Examination of defendant**

6
7 A court-appointed expert or experts must examine the defendant, review the
8 records provided, and, in a report filed with the court and made available to counsel
9 for the defendant and the prosecution, opine as to whether the defendant is
10 currently competent to stand trial. The expert's report must include the following:

11
12 (1) A brief statement of the examiner's training and previous experience as it
13 relates to examining the competence of a criminal defendant to stand trial and
14 preparing a resulting report;

15
16 (2) A summary of the examination conducted by the examiner on the defendant,
17 including statements made by the defendant during that examination, and a
18 list of the records, digital media, and other information reviewed and
19 considered by the examiner;

20
21 (3) A detailed analysis of the competence of the defendant to stand trial using
22 California's current legal standard, including the defendant's ability or
23 inability to understand the nature of the criminal proceedings or assist
24 counsel in the conduct of a defense in a rational manner as a result of a
25 mental health disorder;

26
27 (4) An analysis of all current diagnoses under the most recent version of
28 the *Diagnostic and Statistical Manual of Mental Disorders* applicable to the
29 defendant, based on the available records and evaluation;

30
31 (5) A summary of any assessment—which may include test results—into
32 whether the defendant is malingering or feigning symptoms;

33
34 (6) In a felony proceeding, an opinion as to whether:

35
36 (A) There is a substantial likelihood that the defendant will attain
37 competency in the foreseeable future, with consideration as to the
38 possible benefits of treatment with antipsychotic medication, if within
39 the scope of the expert's licensure;

40
41 (B) Treatment with antipsychotic or other medication is necessary to
42 restore the defendant to competency; and
43

(C) The defendant has capacity to make decisions regarding antipsychotic medication;

(7) An opinion as to whether the defendant is eligible for mental health diversion under section 1001.36, and a statement as to whether symptoms of the mental health disorder or disorders that motivated the defendant's behavior would respond to mental health treatment. This opinion must be provided in a misdemeanor case or upon request by the defense in a felony case;

(8) An opinion as to whether cause exists to suspect that the defendant may have a developmental disability, with an explanation; and

(9) 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).

Advisory Committee Comment

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 no circumstances is the court obligated to appoint more than two experts. (Pen. Code, § 1369(a).) The costs of the experts appointed 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.)

Rule 4.132. Posttrial hearings on competence under section 1370

(a) 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 opine as to whether the defendant has attained competence.

(b) Upon receipt of an evaluation report under (a) 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 attained competence, the court must conduct a hearing as if a certificate of restoration of competence had been filed under

1 section 1372(a)(1). At the hearing, the court may consider any evidence, presented
2 by any party, that is relevant to the question of the defendant's current mental
3 competency.

4
5 (1) At the conclusion of the hearing, if the court finds that it has been established
6 by a preponderance of the evidence that the defendant is mentally competent,
7 the court must reinstate criminal proceedings.

8
9 (2) At the conclusion of the hearing, if the court finds that it has not been
10 established by a preponderance of the evidence that the defendant is mentally
11 competent, criminal proceedings must remain suspended.

12
13 (3) The court's findings on the defendant's mental competency must be stated on
14 the record and recorded in the minutes.

15
16
17 **Rule 4.133.4.131. Probable cause determinations under section 1368.1(a)(2)**

18
19 **(a) Notice of a request for a determination of probable cause**

20
21 The prosecuting attorney must serve and file notice of a request for a determination
22 of probable cause on the defense at least 10 court days before the time appointed
23 for the proceeding.

24
25 **(b) Judge requirement**

26
27 A judge must hear the determination of probable cause unless there is a stipulation
28 by both parties to having the matter heard by a subordinate judicial officer.

29
30 **(c) Defendant need not be present**

31
32 A defendant need not be present for a determination of probable cause to proceed.

33
34 **(d) Application of section 861**

35
36 The one-session requirement of section 861 does not apply.

37
38 **(e) Transcript**

39
40 A transcript of the determination of probable cause must be provided to the
41 prosecuting attorney and counsel for the defendant consistent with the manner in
42 which a transcript is provided in a preliminary examination.

SPR25-13

Criminal Law: Mental Competency Proceedings (Adopt Cal. Rules of Court, rules 4.132 and 4.133; amend rules 4.130 and 4.131)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Mei Tsang, President	A	1) The proposal appropriately addresses the stated purpose 2) There are no unintended fiscal impacts	The committee appreciates the comment.
2.	Superior Court of Los Angeles County by Stephanie Kuo	A	<p>The following comments are representative of the Superior Court of California, County of Los Angeles, and do not represent or promote the viewpoint of any particular officer or employee.</p> <p>In response to the Judicial Council of California's "ITC SPR25-13 Criminal Law: Mental Competency Proceedings," the Superior Court of California, County of Los Angeles (Court), agrees with the proposed changes.</p> <p>As of now, it is unclear what the fiscal impact of the committee's proposed amendments to rule 4.131 will be or if the proposal will provide cost savings.</p> <p>The proposed amendments primarily clarify procedures and eliminate duplicative language. As such, it does not appear that implementation would pose significant challenges for the courts. There would likely be minimal need for staff training, revisions to processes and procedures, or modifications to docket codes and case management systems. Furthermore, two months from Judicial Council approval should be enough and should work well in courts of different sizes.</p>	<p>The committee appreciates the comment.</p> <p>No response required.</p> <p>No response required.</p>
3.	Superior Court of Orange County by Thomas Anthony Williams, Operations Analyst II	A	<p>• <i>Does the proposal appropriately address the stated purpose?</i></p> <p>The proposal appropriately addresses the</p>	The committee appreciates the comment.

SPR25-13

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	Commenter	Position	Comment	Committee Response
			<p>purpose as indicated.</p> <ul style="list-style-type: none"> • <i>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?</i> <p>Yes, in Orange County, the court pays appointed doctors a flat fee for conducting an evaluation and preparing a report pursuant to PC 1368/1369. The requirements of the proposed rule 4.131 could lead to an evaluator's asking for an increased rate to our existing fee schedule since there are now detailed requirements for the contents of their report.</p> <ul style="list-style-type: none"> • <i>Would the proposal provide cost savings? If so, please quantify.</i> <p>The proposal would not provide cost savings.</p> <ul style="list-style-type: none"> • <i>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?</i> <p>The process indicated is currently in place in Orange County. We don't anticipate additional training or updates.</p> <ul style="list-style-type: none"> • <i>Would two months from Judicial Council approval of this proposal until its effective date</i> 	<p>While the amendments to the content of the experts' report are largely based on legislative changes, and are largely similar to existing requirements in rule 4.130(d), the committee is aware that these changes may increase fees in some counties.</p> <p>No response required.</p> <p>No response required.</p>

SPR25-13

Criminal Law: Mental Competency Proceedings (Adopt Cal. Rules of Court, rules 4.132 and 4.133; amend rules 4.130 and 4.131)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<i>provide sufficient time for implementation?</i> Two months would be sufficient time for implementation. • <i>How well would this proposal work in courts of different sizes? Would the proposal provide cost savings? If so, please quantify.</i> N/A	No response required. No response required.