



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 23-081*

For business meeting on May 12, 2023

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**Title**

Criminal Procedure: Mental Competency  
Proceedings

**Agenda Item Type**

Action Required

**Effective Date**

May 15, 2023

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 4.130

**Date of Report**

April 6, 2023

**Recommended by**

Criminal Law Advisory Committee  
Hon. Brian. M. Hoffstadt, Chair

**Contact**

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### Executive Summary

The Criminal Law Advisory Committee recommends amendments to rule 4.130 of the California Rules of Court to reflect statutory changes to Penal Code section 1369(a) regarding treatment with antipsychotic medication of a defendant found incompetent to stand trial, statutory changes to Penal Code section 1370 deleting language that the presumption of competency does not apply to a posttrial hearing on competence, the relettering of subdivisions in Penal Code section 1001.36, and to make technical revisions.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective May 15, 2023, as follows:

1. Subdivision (d)(2)(E) to reflect statutory changes to Penal Code section 1369(a) regarding a recommendation by a psychologist or psychiatrist about treating with antipsychotic medication a defendant found incompetent to stand trial;
2. Subdivision (g) to correct the references to recently relettered subdivisions in Penal Code sections 1001.36;

3. Subdivision (d)(2)(F) to clarify which collateral sources were considered by the examiner and to replace gendered pronouns; and
4. Subdivision (h)(2) to reflect statutory changes to Penal Code section 1370(a)(1)(G) on posttrial hearings on competence by deleting the phrase “except that a presumption of competency does not apply.”

The proposed amended rule is attached at pages 4–5.

### **Relevant Previous Council Action**

Rule 4.130 was adopted effective January 1, 2007. It was most recently amended, effective May 13, 2022, to reflect legislative changes to procedures regarding defendants found incompetent to stand trial in a misdemeanor criminal proceeding (Senate Bill 317; Stats. 2021, ch. 599), and to implement statutory authorization of reevaluations performed by the Department of State Hospitals. (Assembly Bill 133; Stats. 2021, ch. 143.)

### **Analysis/Rationale**

The recommended amendments to rule 4.130 regarding mental competency proceedings reflect statutory changes to Penal Code sections 1369(a) and 1370(a)(1)(G), the relettering of Penal Code section 1001.36(d)–(g), and technical amendments to remove gendered pronouns and clarify which collateral sources were considered by the examiner.

Penal Code section 1369 applies to criminal cases in which a defendant is found to be mentally incompetent. Effective June 30, 2022, this statute was amended in relevant part to revise the respective roles of a psychologist or psychiatrist in recommending treatment with antipsychotic medication of a defendant found incompetent to stand trial, including the requirements for a hearing to determine the defendant’s capacity to make decisions regarding antipsychotic medication. (Sen. Bill 184; Stats. 2022, ch. 47, § 41.)

In accordance with the statutory amendments to Penal Code section 1369, this recommendation amends rule 4.130(d)(2)(E) regarding the requirements of the recommendation by a psychologist or psychiatrist. Specifically, the recommendation deletes the requirement that an examining psychologist inform the court if the psychologist believes that a psychiatrist should examine the defendant to assess whether antipsychotic medication is appropriate. The recommendation also adds provisions around what is required in an opinion from a licensed psychologist or psychiatrist regarding the medical appropriateness of antipsychotic medication.

SB 184 also amended Penal Code section 1370(a)(1)(G) on posttrial hearings on competence. This subdivision permits the court to conduct a subsequent competency hearing if there is substantial evidence of a change in the defendant’s condition, provided by defense counsel or jail medical or mental health staff. Prior to the amendment, the statute directed the court to hold the subsequent competency hearing as if a certificate of restoration had been returned under Penal Code section 1372(a)(1), “except that a presumption of competency shall not apply.” A

presumption of competency applies to hearings under Penal Code section 1372, which details the procedures for determining a defendant's restoration of mental competence in the course of receiving treatment. (See *People v. Mixon* (1990) 225 Cal.App.3d 1471.) SB 184 deleted the exception from Penal Code section 1370 to align the standards for a subsequent competency hearing with those for a certificate of restoration. This statutory amendment requires deletion of the phrase "except that a presumption of competency does not apply" from rule 4.130(h)(2) on posttrial hearings on competence. Because this deletion is a minor change needed to conform the rule to the statute, the committee is recommending it now even though it was not circulated for public comment.<sup>1</sup>

Effective January 1, 2023, Penal Code section 1001.36 was amended to expand eligibility for mental health diversion and to reletter existing subdivisions. (Sen. Bill 1223; Stats. 2022, ch. 735). This recommendation updates the references to the subdivisions in this Penal Code statute.

### **Policy implications**

This proposal has no major policy implications because the recommendation is to implement new legislation. It aligns with the Judicial Council's policy to keep the California Rules of Court consistent with related statutes.

### **Comments**

The proposal (other than the change recommended to rule 4.130(h)(2)) circulated for comment from December 9, 2022, to January 20, 2023. Two comments were received. The Superior Court of Orange County and the Orange County Bar Association agreed with the proposal.

### **Alternatives considered**

The committee did not consider the alternative of taking no action, determining that it was important to amend the rule to implement legislative changes.

### **Fiscal and Operational Impacts**

Any impacts will arise from the new statutory provisions rather than council action. The committee does not anticipate fiscal impacts from the rule revisions.

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.130, at pages 4–6
2. Chart of comments, at page 7

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<sup>1</sup> A recommendation for a minor substantive change unlikely to create controversy may be adopted without circulation for comment. Cal. Rules of Court, rule 10.22(d). This change was brought to the attention of the committee only after the rest of the proposal had already circulated.

**Rule 4.130. Mental competency proceedings**

**(a)–(c)       \* \* \***

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

**(1)       \* \* \***

**(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)–(D)       \* \* \***

**(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 as outlined in Penal Code section 1370. 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; 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

1 results of psychological testing; police reports; criminal history;  
2 statement of the defendant; statements of any witnesses to the alleged  
3 crime; booking information, mental health screenings, and mental  
4 health records following the alleged crime; consultation with the  
5 prosecutor and defendant's attorney; and any other collateral sources  
6 considered by the examiner in reaching ~~his or her~~ a conclusion;  
7

8 (G)–(H) \* \* \*

9  
10 (3) \* \* \*

11  
12 (e)–(f) \* \* \*

13  
14 **(g) Reinstatement of felony proceedings under section 1001.36~~(d)~~(g)**  
15

16 If a defendant eligible for commitment under section 1370 is granted diversion  
17 under section 1001.36, and during the period of diversion, the court determines that  
18 criminal proceedings should be reinstated under section 1001.36~~(d)~~(g), the court  
19 must, under section 1369, appoint a psychiatrist, licensed psychologist, or any other  
20 expert the court may deem appropriate, to examine the defendant and return a  
21 report opining on the defendant's competence to stand trial. The expert's report  
22 must be provided to counsel for the People and to the defendant's counsel.  
23

24 (1) \* \* \*

25  
26 (2) If the court finds by a preponderance of the evidence that the defendant is  
27 mentally competent, the court must hold a hearing as set forth in Penal Code  
28 section 1001.36~~(d)~~(g).  
29

30 (3)–(4) \* \* \*

31  
32 **(h)**  
33

34 (1) \* \* \*

35  
36 (2) On receipt of an evaluation report under (h)(1) or an evaluation by the State  
37 Department of State Hospitals under Welfare and Institutions Code section  
38 4335.2, the court must direct the clerk to serve a copy on counsel for the  
39 People and counsel for the defendant. If, in the opinion of the appointed  
40 expert or the department's expert, the defendant has regained competence,  
41 the court must conduct a hearing, as if a certificate of restoration of  
42 competence had been filed under section 1372(a)(1), ~~except that a~~  
43 ~~presumption of competency does not apply~~. At the hearing, the court may

1 consider any evidence, presented by any party, that is relevant to the question  
2 of the defendant's current mental competency.

3

4 (A)–(C) \* \* \*

**W23-04****Mental Competency Proceedings** (Cal. Rules of Court, rule 4.130)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No</p> <p><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> Not applicable to this modification other than related action (training and procedures) based on the legislation itself.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes</p> <p><i>How well would this proposal work in courts of different sizes?</i> This proposal will have minimal impact to courts of different sizes.</p>	No response required.
2.	Orange County Bar Association by Michael A. Gregg, President	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Accurately reflects changes to PC 1369 and 1001.36. The proposal appropriately addresses the stated purpose.</p>	No response required.