



## JUDICIAL COUNCIL OF CALIFORNIA

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# R E P O R T T O T H E J U D I C I A L C O U N C I L

*Item No.: 20-123*

For business meeting on May 15, 2020

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**Title**

Criminal Law: Mental Competency  
Proceedings

**Agenda Item Type**

Action Required

**Effective Date**

September 1, 2020

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

Amend Cal. Rules of Court, rule 4.130

**Date of Report**

May 15, 2020

**Recommended by**

Criminal Law Advisory Committee  
Hon. J. Richard Couzens, Chair

**Contact**

Sarah Fleischer-Ihn, 415-865-7702  
[Sarah.Fleischer-Ihn@jud.ca.gov](mailto:Sarah.Fleischer-Ihn@jud.ca.gov)

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### Executive Summary

The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.130, to reflect recent legislative changes by deleting an advisory committee comment stating that expert reports are publicly accessible court documents, and replacing outdated terminology to describe mental health disorders.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective September 1, 2020, to:

1. Delete the advisory committee comment that states “[t]he expert reports, unless sealed under rule 2.550, are publicly accessible court documents”; and
2. Replace references to a “mental disorder” with “mental health disorder.”

The text of the amended rule is attached at pages 3–4.

## **Relevant Previous Council Action**

Rule 4.130 was adopted effective January 1, 2007. It was most recently amended, effective January 1, 2020, to incorporate changes resulting from Assembly Bill 1810 (Stats. 2018, ch. 34), a bill that significantly altered the statutory landscape for mental competency proceedings.

## **Analysis/Rationale**

Effective January 1, 2020, new Penal Code section 1369.5 states that documents submitted to a court in a mental competency proceeding are “presumptively confidential, unless otherwise provided by law.” The advisory committee comment that states “[t]he expert reports, unless sealed under rule 2.550, are publicly accessible court documents” conflicts with this new law.

Also effective January 1, 2020, Assembly Bill 46 (Stats. 2019, ch. 9) amended, in relevant part, Penal Code section 1367 to replace references to “mental disorder” with “mental health disorder.” The bill’s intent was to replace outdated terminology used to describe mental health conditions and individuals with mental health conditions. (Sen. Rules Com., Off. of Sen. Floor Analyses, 2d reading analysis of Sen. Bill No. 46 (2019—2020 Reg. Sess.), June 5, 2019, p. 1.)

## **Policy implications**

This proposal has no major policy implications. It aligns with the Judicial Council’s policy to keep rules consistent with related statutes.

## **Comments**

This proposal did not circulate for public comment because the proposed changes are minor and unlikely to create controversy, and therefore may be adopted without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

## **Alternatives considered**

The committee discussed whether to add a provision to the rule addressing the presumptive confidentiality of documents submitted in a mental competency proceeding but decided that such a provision was unnecessary because Penal Code section 1369.5 clearly addresses the issue.

## **Fiscal and Operational Impacts**

No fiscal or operational impacts are anticipated as a result of amending rule 4.130. Fiscal and operational impacts to court procedures are a result of the legislative changes.

## **Attachments and Links**

1. Cal. Rules of Court, rule 4.130, at pages 3–4
2. Link A: Pen. Code, § 1369.5,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1369.5&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1369.5&lawCode=PEN)
3. Link B: Assem. Bill 46,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB46](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB46)

Rule 4.130 of the California Rules of Court is amended, effective September 1, 2020, to read:

**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) 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)–(G) \* \* \*

(3) \* \* \*

**(e)–(f) \* \* \***

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

(1)–(3) \* \* \*

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

10  
11 (5)–(6) \* \* \*

12  
13 (h) \* \* \*

14  
15 **Advisory Committee Comment**

16  
17 \* \* \*

18  
19 ~~The expert reports, unless sealed under rule 2.550, are publicly accessible court documents.~~

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21 \* \* \*