

AMENDMENT TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on May 12, 2022, effective May 13, 2022

1	Rule 4.130. Mental competency proceedings	2
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1 **Rule 4.130. Mental competency proceedings**

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3 **(a)–(c) * * ***

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

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7 (1) * * *

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9 (2) Any court-appointed experts must examine the defendant and advise the
10 court on the defendant's competency to stand trial. Experts' reports are to be
11 submitted to the court, counsel for the defendant, and the prosecution. The
12 report must include the following:

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14 (A)–(E) * * *

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

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

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

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36 (3) * * *

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38 *(Subd (d) amended effective May 13, 2022; previously amended effective January 1, 2018,*
39 *January 1, 2020, and September 1, 2020.)*

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41 **(e) * * ***

1 (f) **Posttrial procedure**

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- 3 (1) If the defendant is found mentally competent, the court must reinstate the
- 4 criminal proceedings.
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- 6 (2) If the defendant in a felony case is found to be mentally incompetent under
- 7 section 1370 or the defendant in any criminal action is found to be mentally
- 8 incompetent under section 1370.1 due to a developmental disability, the
- 9 criminal proceedings remain suspended and the court ~~must~~ either:
- 10
- 11 (A) Must issue an order committing the person for restoration treatment
- 12 under the provisions of the governing statute; or
- 13
- 14 (B) In the case of a person eligible for commitment under ~~Penal Code~~
- 15 ~~sections 1370 or 1370.01~~, if the person is found incompetent due to a
- 16 mental disorder, may consider placing the ~~committed~~ person on a
- 17 program of diversion under section 1001.36 in lieu of commitment.
- 18
- 19 (3) If the defendant is found to be mentally incompetent in a misdemeanor case
- 20 under section 1370.01, the criminal proceedings remain suspended, and the
- 21 court may dismiss the case under section 1385 or conduct a hearing to
- 22 consider placing the person on a program of diversion under section 1001.36.
- 23

24 *(Subd (f) amended effective May 13, 2022; previously amended effective January 1, 2020.)*

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

27 **Reinstatement of felony proceedings under section 1001.36(d)**

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- 29 (1) ~~After the court finds that the defendant is mentally incompetent and before~~
- 30 ~~the defendant is transported to a facility for restoration under section~~
- 31 ~~1370(a)(1)(B)(i), the court may consider whether the defendant may benefit~~
- 32 ~~from diversion under Penal Code section 1001.36. The court may set a~~
- 33 ~~hearing to determine whether the defendant is an appropriate candidate for~~
- 34 ~~diversion. When determining whether to exercise its discretion to grant~~
- 35 ~~diversion under this section, the court may consider previous records of~~
- 36 ~~participation in diversion under section 1001.36.~~
- 37
- 38 (2) ~~The maximum period of diversion after a finding that the defendant is~~
- 39 ~~incompetent to stand trial is the lesser of two years or the maximum time for~~
- 40 ~~restoration under Penal Code section 1370(c)(1) (for felony offenses) or~~
- 41 ~~1370.01(c)(1) (for misdemeanor offenses).~~
- 42

- (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 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 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)(1) * * *

(B)(2) * * *

(C)(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, ~~under Penal Code section 1370 (for felonies) or 1370.01 (for misdemeanors)~~, and placed for restoration treatment.

(D)(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,

1 instead of issuing a commitment order under ~~Penal Code~~ sections 1370 or
2 ~~1370.01~~, refer the matter to the conservatorship investigator of the county of
3 commitment to initiate conservatorship proceedings for the defendant under
4 Welfare and Institutions Code section 5350 et seq.

- 5
6 ~~(6) If the defendant performs satisfactorily and completes diversion, the case~~
7 ~~must be dismissed under the procedures stated in Penal Code section~~
8 ~~1001.36, and the defendant must no longer be deemed incompetent to stand~~
9 ~~trial.~~

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11 *(Subd (g) amended effective May 13, 2022; adopted effective January 1, 2020; previously*
12 *amended effective September 1, 2020.)*

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

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16 (1) * * *

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18 (2) On receipt of ~~the an~~ evaluation report under (h)(1) or an evaluation by the
19 State Department of State Hospitals under Welfare and Institutions Code
20 section 4335.2, the court must direct the clerk to serve a copy on counsel for
21 the People and counsel for the defendant. If, in the opinion of the appointed
22 expert or the department's expert, the defendant has regained competence,
23 the court must conduct a hearing; as if a certificate of restoration of
24 competence had been filed under ~~Penal Code~~ section 1372(a)(1), except that
25 a presumption of competency does not apply. At the hearing, the court may
26 consider any evidence, presented by any party, ~~which that~~ is relevant to the
27 question of the defendant's current mental competency.

28
29 (A)–(C) * * *

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31 *Subd (h) amended effective May 13, 2022; adopted effective January 1, 2020.)*

32
33 *Rule 4.130 amended effective May 13, 2022; adopted effective January 1, 2007; previously*
34 *amended effective January 1, 2018, January 1, 2020, and September 1, 2020.*