

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
2	Rule 4.220. Remote video proceedings in traffic infraction cases [Repealed]	5
3		

1 **Rule 4.130. Mental competency proceedings**

2
3 **(a)–(c) * * ***

4
5 **(d) Examination of defendant after initiation of mental competency proceedings**

6
7 (1) * * *

8
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:

13
14 (A)–(E) * * *

15
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).

35
36 (3) * * *

37
38 *(Subd (d) amended effective May 13, 2022; previously amended effective January 1, 2018,*
39 *January 1, 2020, and September 1, 2020.)*

40
41 **(e) * * ***

1 (f) **Posttrial procedure**

- 2
- 3 (1) If the defendant is found mentally competent, the court must reinstate the
- 4 criminal proceedings.
- 5
- 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.)*

25

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)**

28

- 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.~~

10
11 *(Subd (g) amended effective May 13, 2022; adopted effective January 1, 2020; previously*
12 *amended effective September 1, 2020.)*

13
14 **(h) Posttrial hearings on competence under section 1370**

15
16 (1) * * *

- 17
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) * * *

30
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.*

35
36
37 **~~Rule 4.220. Remote video proceedings in traffic infraction cases [Repealed]~~**

38
39 **~~(a) Authorization for remote video proceedings~~**

40
41 ~~A superior court may by local rule permit arraignments, trials, and related~~
42 ~~proceedings concerning the traffic infractions specified in (b) to be conducted by~~
43 ~~two-way remote video communication methods under the conditions stated below.~~

1
2 **(b) Definitions**

3
4 For the purposes of this rule:

5
6 (1) ~~“Infraction” means any alleged infraction involving a violation of the Vehicle~~
7 ~~Code or any local ordinance adopted under the Vehicle Code, other than an~~
8 ~~infraction cited under article 2 (commencing with section 23152) of chapter 12~~
9 ~~of division 11 of the Vehicle Code, except that the procedures for remote video~~
10 ~~trials authorized by this rule do not apply to any case in which an informal~~
11 ~~juvenile and traffic court exercises jurisdiction over a violation under sections~~
12 ~~255 and 256 of the Welfare and Institutions Code.~~

13
14 (2) ~~“Remote video proceeding” means an arraignment, trial, or related proceeding~~
15 ~~conducted by two-way electronic audiovisual communication between the~~
16 ~~defendant, any witnesses, and the court in lieu of the physical presence of both~~
17 ~~the defendant and any witnesses in the courtroom.~~

18
19 (3) ~~“Due date” means the last date on which the defendant’s appearance is timely~~
20 ~~under this rule.~~

21
22 **(c) Application**

23
24 This rule ~~establishes the minimum procedural requirements and options for courts~~
25 ~~that conduct remote video proceedings for cases in which a defendant is charged with~~
26 ~~an infraction as defined in (b) and the defendant requests to proceed according to this~~
27 ~~rule.~~

28
29 **(d) Designation of locations and presence of court clerk**

30
31 (1) ~~The court must designate the location or locations at which defendants may~~
32 ~~appear with any witnesses for a remote video proceeding in traffic infraction cases.~~

33
34 (2) ~~The locations must be in a public place, and the remote video proceedings must~~
35 ~~be viewable by the public at the remote location as well as at the courthouse.~~

36
37 (3) ~~A court clerk must be present at the remote location for all remote video~~
38 ~~proceedings.~~

39
40 **(e) Required procedures and forms and request by defendant**

41
42 A court that conducts remote video proceedings under this rule must comply with the
43 following procedures and use the required forms in this section. In addition to

1 following the standard provisions for processing traffic infraction cases, the defendant
2 may request to proceed by remote video proceeding as provided below.

3
4 ~~(1) Arraignment and trial on the same date~~

5
6 The following procedures apply to a remote video proceeding when the court
7 grants a defendant's request to have an arraignment and trial on the same date:

8
9 ~~(A) The defendant must review a copy of the Instructions to Defendant for~~
10 ~~Remote Video Proceeding (form TR-500-INFO).~~

11
12 ~~(B) To proceed by remote video arraignment and trial, the defendant must~~
13 ~~sign and file a Notice and Waiver of Rights and Request for Remote~~
14 ~~Video Arraignment and Trial (form TR-505) with the clerk by the~~
15 ~~appearance date indicated on the Notice to Appear or a continuation of~~
16 ~~that date granted by the court and must deposit bail when filing the form.~~

17
18 ~~(C) A defendant who is dissatisfied with the judgment in a remote video trial~~
19 ~~may appeal the judgment under rules 8.901-8.902.~~

20
21 ~~(2) Arraignment on a date that is separate from a trial date~~

22
23 The following procedures apply to a remote video proceeding when the court
24 grants a defendant's request to have an arraignment that is set for a date that is
25 separate from the trial date:

26
27 ~~(A) The defendant must review a copy of the Instructions to Defendant for~~
28 ~~Remote Video Proceeding (form TR-500-INFO).~~

29
30 ~~(B) To proceed by remote video arraignment on a date that is separate~~
31 ~~from a~~
32 ~~trial date, the defendant must sign and file a Notice and Waiver of~~
33 ~~Rights and Request for Remote Video Proceeding (form TR-510)~~
34 ~~with the clerk by the appearance date indicated on the Notice to~~
35 ~~Appear or a continuation of that date granted by the court.~~

36
37 ~~(3) Trial on a date that is separate from the date of arraignment~~

38
39 The following procedures apply to a remote video proceeding when the court
40 grants a defendant's request at arraignment to have a trial set for a date that is
41 separate from the date of the arraignment:

42
43 ~~(A) The defendant must review a copy of the Instructions to Defendant for~~

Remote Video Proceeding (form TR-500 INFO).

(B) ~~To proceed by remote video trial, the defendant must sign and file a Notice and Waiver of Rights and Request for Remote Video Proceeding (form TR-510) with the clerk by the appearance date indicated on the Notice to Appear or a continuation of that date granted by the court and must deposit bail with the form as required by the court under section (f).~~

(C) ~~A defendant who is dissatisfied with the judgment in a remote video trial may appeal the judgment under rules 8.901-8.902.~~

~~(4) Judicial Council forms for remote video proceedings~~

The following forms must be made available by the court and used by the defendant to implement the procedures that are required under this rule:

(A) ~~Instructions to Defendant for Remote Video Proceeding (form TR-500 INFO);~~

(B) ~~Notice and Waiver of Rights and Request for Remote Video Arraignment and Trial (form TR-505); and~~

(C) ~~Notice and Waiver of Rights and Request for Remote Video Proceeding (form TR-510).~~

(f) Deposit of bail

~~Procedures for deposit of bail to process requests for remote video proceedings must follow rule 4.105.~~

(g) Appearance of witnesses

~~On receipt of the defendant's waiver of rights and request to appear for trial as specified in section (e)(1) or (e)(3), the court may permit law enforcement officers and other witnesses to testify at the remote location or in court and be cross-examined by the defendant from the remote location.~~

(h) Authority of court to require physical presence of defendant and witnesses

~~Nothing in this rule is intended to limit the authority of the court to issue an order requiring the defendant or any witnesses to be physically present in the courtroom in any proceeding or portion of a proceeding if the court finds that circumstances require the physical presence of the defendant or witness in the courtroom.~~

1
2 **(i) Extending due date for remote video trial**

3
4 If the clerk receives the defendant's written request for a remote video arraignment and
5 trial on form TR-505 or remote video trial on form TR-510 by the appearance date
6 indicated on the Notice to Appear and the request is granted, the clerk must, within 10
7 court days after receiving the defendant's request, extend the appearance date by 25
8 calendar days and must provide notice to the defendant of the extended due date on the
9 Notice and Waiver of Rights and Request for Remote Video Arraignment and Trial
10 (form TR-505) or Notice and Waiver of Rights and Request for Remote Video
11 Proceeding (form TR-510) with a copy of any required local forms.
12

13 **(j) Notice to arresting officer**

14
15 If a court grants the defendant's request for a remote video proceeding after receipt of
16 the defendant's Notice and Waiver of Rights and Request for Remote Video
17 Arraignment and Trial (form TR-505) or Notice and Waiver of Rights and Request for
18 Remote Video Proceeding (form TR-510) and bail deposit, if required, the clerk must
19 deliver, mail, or e-mail a notice of the remote video proceedings to the arresting or
20 citing law enforcement officer. The notice to the officer must specify the location and
21 date for the remote video proceeding and provide an option for the officer to request at
22 least five calendar days before the appearance date to appear in court instead of at the
23 remote location.
24

25 **(k) Due dates and time limits**

26
27 Due dates and time limits must be as stated in this rule, unless extended by the court.
28 The court may extend any date, and the court need not state the reasons for granting
29 or denying an extension on the record or in the minutes.
30

31 **(l) Ineligible defendants**

32
33 If the defendant requests a remote video proceeding and the court determines that the
34 defendant is ineligible, the clerk must extend the due date by 25 calendar days and
35 notify the defendant of the determination and the new due date.
36

37 **(m) Noncompliance**

38
39 If the defendant fails to comply with this rule (including depositing the bail amount
40 when required, signing and filing all required forms, and complying with all time
41 limits and due dates), the court may deny a request for a remote video proceeding and
42 may proceed as otherwise provided by statute.
43

1 **~~(n) Fines, assessments, or penalties~~**

2
3 ~~This rule does not prevent or preclude the court from imposing on a defendant who is~~
4 ~~found guilty any lawful fine, assessment, or other penalty, and the court is not limited~~
5 ~~to imposing money penalties in the bail amount, unless the bail amount is the~~
6 ~~maximum and the only lawful penalty.~~

7
8 **~~(o) Local rules and forms~~**

9
10 ~~A court establishing remote video proceedings under this rule may adopt such local~~
11 ~~rules and additional forms as may be necessary or appropriate to implement the rule~~
12 ~~and the court's local procedures not inconsistent with this rule.~~

13
14 **~~(p) Notice and collection of information and reports on remote video proceedings~~**

15
16 ~~Each court that establishes a local rule authorizing remote video proceedings under~~
17 ~~this rule must notify the Judicial Council, institute procedures as required by the~~
18 ~~council for collecting and evaluating information about that court's program, and~~
19 ~~prepare semiannual reports to the council that include an assessment of the costs and~~
20 ~~benefits of remote video proceedings at that court.~~

21
22 *Rule 4.220 repealed effective May 13, 2022; adopted effective February 1, 2013; previously*
23 *amended effective September 1, 2015.*
24