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(CALCRIM) i

TOC: Judicial Council of California Criminal Jury Instructions (CALCRIM) > Series 3400 DEFENSES AND INSANITY > C. INSANITY AND CIVIL COMMITMENTS > 3451 Present Mental Competence of Defendant

2-3400 CALCRIM 3451

Judicial Council of California Criminal Jury Instructions (CALCRIM)

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> Series 3400 DEFENSES AND INSANITY C. INSANITY AND CIVIL COMMITMENTS

> > 2-3400 CALCRIM 3451

3451 Present Mental Competence of Defendant

You must decide whether the defendant is mentally competent to stand trial. That is the only purpose of this proceeding. Do not consider whether the defendant is guilty or not guilty of any crime or whether (he/she) was sane or insane at the time that any alleged crime was committed.

The defendant is mentally competent to stand trial if (he/she) can do all of the following:

- 1. Understand the nature and purpose of the criminal proceedings against (him/her);
- 2. Assist, in a rational manner, (his/her) attorney in presenting (his/her) defense;

AND

3. Understand (his/her) own status and condition in the criminal proceedings.

The law presumes that a defendant is mentally competent. In order to overcome this presumption, ((the defendant/the People) must prove/it must be proved) that it is more likely than not that the defendant is now mentally incompetent because of a (mental disorder/developmental disability).

[A developmental disability is a disability that begins before a person is 18 years old and continues, or is expected to continue, for an indefinite period of time. It must be a substantial handicap and does not include other handicapping conditions that are solely physical in nature. Examples of developmental disabilities include mental retardation, cerebral palsy, epilepsy, autism, and conditions closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the standard for competence.

The party that seeks a finding of incompetence bears the burden of proof. If the court raises the issue, neither party bears that burden. Choose the appropriate language regarding which party bears the burden of proof in the paragraph that begins with "The law presumes that" (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460 [280 Cal.Rptr. 175] .)

Give CALCRIM No. 3550, *Pre-Deliberation Instructions*, and any other relevant post-trial instructions, such as CALCRIM No. 222, *Evidence*, or CALCRIM No. 226, *Witnesses*.

Do **not** give CALCRIM No. 224, *Circumstantial Evidence: Sufficiency of Evidence*, or CALCRIM No. 225, *Circumstantial Evidence: Intent or Mental State*. These instructions have "no application when the standard of proof is preponderance of the evidence." (*People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1274 [18 Cal.Rptr.3d 286]).

AUTHORITY

- Instructional Requirements. Pen. Code, §§ 1367-1370.
- Developmental Disability Defined. Pen. Code, § 1370.1(a)(1)(H).
- Presumption of Competence. Pen. Code, § 1369(f).
- Unanimous Verdict. Pen. Code, § 1369(f).

Secondary Sources

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 698.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 64, Suspension of Criminal Proceedings, §§ 64.01, 64.02 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 124, *Jurisdiction and Disposition Hearings*, § 124.04 (Matthew Bender).

RELATED ISSUES

Threshold for Section 1368 Hearing

A trial court must conduct a section 1368 hearing when there is substantial evidence of incompetence. (*People v. Cox* (1978) 82 Cal.App.3d 221, 225-226 [147 Cal.Rptr. 73] .) Substantial evidence raises a reasonable doubt about the defendant's competence to stand trial. (*People v. Frye* (1998) 18 Cal.4th 894, 951-952 [77 Cal.Rptr.2d 25, 959 P.2d 183] .)

Defense Counsel May Seek Finding Contrary to Client's Wishes

A section 1368 hearing is civil in nature. Since neither guilt nor innocence is at issue, defense counsel must "advocate the position counsel perceives to be in the client's best interests even when that interest conflicts with the client's stated position [citation]." (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [42 Cal.Rptr.2d 543, 897 P.2d 481] .)

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	§ 1370.1. Verdict as to mental competence; Find				Criminal Jury Instructions (LexisNexis MatthewBender), CALCRIM No. 3451, Present Mental Competence of Defendant		

(a)

(1)

- (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.
- (B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.
- (i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or

developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600).

- (ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.
- (iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.
- (iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.
- (C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.
- (D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.
- (E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.
- (F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.
- (G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.
- (H) As used in this section, "developmental disability" means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely and

constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

- (2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.
- (3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:
 - (A) State summary criminal history information.
 - (B) Any arrest reports prepared by the police department or other law enforcement agency.
- (C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.
- (4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5)

(A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal action or revocation proceedings before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to another facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b)

- (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed, or the outpatient supervisor where the defendant is placed on outpatient status, shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.
- (2) A defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status, shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.
- (3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.
- (4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.
- (c)
- (1)
- (A) At the end of three years from the date of commitment or a period of commitment equal https://www.lexis.com/research/retrieve?_m=014f211d46b191150e8f4ff1d29ec9f3&csvc=toc2doc&cform=tocslim&_fmtstr=FULL&docnum=1&_startdoc=1&w... 4/12

to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2)

- (A) Except as provided in subparagraph (B), in the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.
- (B) In revocation proceedings alleging a violation of mandatory supervision in which the defendant remains incompetent upon return to court under subparagraph (A), the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the court shall reinstate mandatory supervision and modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. Actions alleging a violation of mandatory supervision shall not be subject to dismissal under Section 1385.
- (d) Except as provided in subparagraph (B) of paragraph (2) of subdivision (c), the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.
- (e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or a community board and care facility.

* History:

Added Stats 1977 ch 695 § 5. Amended Stats 1978 ch 429 § 159, effective July 17, 1978, operative July 1, 1978; Stats 1980 ch 547 § 9, ch 859 § 2, ch 1253 § 2; Stats 1992 ch 722 § 13

(SB 485), effective September 14, 1992; Stats 1996 ch 1026 § 2 (AB 2104), ch 1076 § 2.5 (SB 1391); Stats 2012 ch 448 § 41 (AB 2370), effective January 1, 2013, ch 457 § 41 (SB 1381), effective January 1, 2013; Stats 2013 ch 76 § 156 (AB 383), effective January 1, 2014; Stats 2014 ch 759 § 10 (SB 1412), effective January 1, 2015.

¾ Notes:

- ★ 1. Editor's Notes
- ★ 2. Former Sections
- ★ 3. Amendments
- 3 4. Note

¥ 1.

Editor's Notes

For legislative intent, see the 2012 Note under Pen C § 1001.20.

¥ 2.

Former Sections:

Former § 1370.1, relating to proceedings under Lanterman Developmental Disabilities Services Act after court's order on finding defendant mentally retarded, was added Stats 1971 ch 1817 § 1, amended Stats 1973 ch 546 § 54, effective September 17, 1973, Stats 1976 ch 1158 § 1, and repealed Stats 1977 ch 695 § 4.

3. Amendments:

- ★ 1978 Amendment
- 1980 Amendment
- 1992 Amendment
- 1996 Amendment
- ★ 2012 Amendment
- 2013 Amendment
- ★ 2014 Amendment

₹ 1978 Amendment:

Substituted (1) "Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code" for "Division 25 (commencing with Section 38000) of the Health and Safety Code" in the first paragraph of subd (a); and (2) "Director of Developmental Services" for "Director of Health" in the second paragraph of subd (a).

₹ 1980 Amendment:

(1) Added subdivision designations (1) and (2) to subd (a); (2) amended the first paragraph of subd (a)(1) by substituting (a) "the defendant" for "he" after "suspended until"; (b) "consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee and that (A)" for "order that (1)" before "in the meantime"; (c) all that part following "defendant's speedy" for "restoration of mental competence, or be ordered to undergo outpatient treatment as specified in Section 1370.3 and (2) upon his becoming competent, he be redelivered to the sheriff or other person designated by the court to be returned to court where the criminal process shall resume" at the end of the second sentence; and (d) "designee and to the Director of Developmental Services" for "his designee" at the end of the paragraph; (3) amended the second paragraph of subd (a)(1) by adding (a) "originates before an individual attains age 18," and ", and shall not include other handicapping conditions that are

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PENAL CODE

Part 2. Of Criminal Procedure Title 10. Miscellaneous Proceedings

Chapter 6. Inquiry Into the Competency of the Defendant Before Trial or After Conviction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 1370.02 (2015)

§ 1370.02. Finding of competency or incompetency during postrelease supervision or parole revocation hearing

- (a) If the defendant is found mentally competent during a postrelease community supervision or parole revocation hearing, the revocation proceedings shall resume. The formal hearing on the revocation shall occur within a reasonable time after resumption of the proceedings, but in no event may the defendant be detained in custody for over 180 days from the date of arrest.
- (b) If the defendant is found mentally incompetent, the court shall dismiss the pending revocation matter and return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may, using the least restrictive option to meet the mental health needs of the defendant, also do any of the following:
- (1) Modify the terms and conditions of supervision to include appropriate mental health treatment.
- (2) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.
- (3) Refer the matter to the public guardian of the county of commitment to initiate

conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public guardian pursuant to this paragraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the defendant.

(c)

- (1) Notwithstanding any other law, if a person subject to parole pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 is found mentally incompetent, the court shall order the parolee to undergo treatment pursuant to Section 1370 for restoring the person to competency, except that if the parolee is not restored to competency within the maximum period of confinement and the court dismisses the revocation, the court shall return the parolee to parole supervision.
- (2) If the parolee is returned to parole supervision, the court may, using the least restrictive option to meet the mental health needs of the parolee, do any of the following:
 - (A) Modify the terms and conditions of parole to include appropriate mental health treatment.
- (B) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the parolee.
- (C) Refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public quardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public quardian pursuant to this subparagraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the parolee.
- (d) If a conservatorship is established for a defendant or parolee pursuant to subdivision (b) or (c), the county or the Department of Corrections and Rehabilitation shall not compassionately release the defendant or parolee or otherwise cause the termination of his or her supervision or parole based on the establishment of that conservatorship.

THISTORY:

Added Stats 2014 ch 759 § 9 (SB 1412), effective January 1, 2015.

Hierarchy Notes:

Pt. 2, Tit. 10, Ch. 6 Note

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incompetency during postrelease supervision or parole revocation hearing

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