

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W23-04

Title	Action Requested
Criminal Procedure: Mental Competency Proceedings	Review and submit comments by January 20, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.130	May 15, 2023
Proposed by	Contact
Criminal Law Advisory Committee Hon. Brian. M. Hoffstadt, Chair	Sarah Fleischer-Ihn, 415-865-7702 sarah.fleischer-ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends amendments to rule 4.130 of the California Rules of Court to reflect the renumbering of Penal Code section 1001.36, statutory changes to Penal Code section 1369(a) regarding treatment with antipsychotic medication of a defendant found incompetent to stand trial, and minor, nonsubstantive technical revisions.

Background

Effective June 30, 2022, Penal Code section 1369, which applies to felony cases in which a defendant is found to be mentally incompetent, was amended, in relevant part, to change how a court may order treatment with antipsychotic medication of a defendant found incompetent to stand trial, including on an involuntary basis. (Sen. Bill 184; Stats. 2022, ch. 180.)

Effective January 1, 2023, Penal Code section 1001.36 was amended to expand eligibility for mental health diversion, and included the renumbering of existing subdivisions. (Sen. Bill 1223; Stats. 2022, ch. 735.)

The Proposal

This proposal would amend rule 4.130 as follows:

- Amend subdivision (d)(2)(E) to reflect statutory changes to Penal Code section 1369(a) regarding a recommendation by a psychologist or psychiatrist about treating a defendant found incompetent to stand trial with antipsychotic medication, by deleting the statement that if an examining psychologist is of the opinion that a referral to a psychiatrist is

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

necessary to address the medical appropriateness of antipsychotic medication, the psychologist must inform the court of this opinion and the psychologist's recommendation that a psychiatrist should examine the defendant, and adding provisions around what is required in an opinion from a licensed psychologist or psychiatrist regarding the medical appropriateness of antipsychotic medication;

- Amend subdivision (d)(2)(F) to clarify what collateral sources were considered by the examiner and replacing gendered pronouns; and
- Amend subdivision (g) to correct the references to recently renumbered Penal Code section 1001.36(d) to 1001.36(g).

The committee discussed whether the rule should include the new language in Penal Code section 1369(a)(2)(B) and (C) around what is required in an opinion from a licensed psychologist or psychiatrist regarding the medical appropriateness of antipsychotic medication, because the language would largely mirror the statutory requirements. The committee decided that including the requirements would be useful when the rule is referenced by court-appointed experts.

The committee recommends an immediate effective date upon Judicial Council approval because the proposed amendments reflecting changes to Penal Code section 1369 have been in effect since June 30, 2022.

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.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would an immediate effective date upon Judicial Council approval of this proposal provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 4–5

Rule 4.130 of the California Rules of Court would be amended, effective May 15, 2023, to read:

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)–(D) * * *

15
16 (E) Under Penal Code section 1369, a statement on whether treatment with
17 antipsychotic or other medication is medically appropriate for the
18 defendant, ~~whether the treatment is likely to restore the defendant to~~
19 ~~mental competence, a list of likely or potential side effects of the~~
20 ~~medication, the expected efficacy of the medication, possible~~
21 ~~alternative treatments, whether it is medically appropriate to administer~~
22 ~~antipsychotic or other medication in the county jail, and whether the~~
23 defendant has capacity to make decisions regarding antipsychotic or
24 other medication as outlined in Penal Code section 1370. If an
25 examining psychologist is of the opinion that a referral to a psychiatrist
26 is necessary to address these issues, the psychologist must inform the
27 court of this opinion and his or her recommendation that a psychiatrist
28 should examine the defendant; If a licensed psychologist examines the
29 defendant and opines that treatment with antipsychotic medication may
30 be appropriate, the psychologist’s opinion must be based on whether
31 the defendant has a mental disorder that is typically known to benefit
32 from that treatment. A licensed psychologist’s opinion must not exceed
33 the scope of their license. If a psychiatrist examines the defendant and
34 opines that treatment with antipsychotic medication is appropriate, the
35 psychiatrist must inform the court of their opinion as to the likely or
36 potential side effects of the medication, the expected efficacy of the
37 medication, and possible alternative treatments, as outlined in Penal
38 Code section 1370;

39
40 (F) A list of all sources of information considered by the examiner,
41 including legal, medical, school, military, regional center, employment,
42 hospital, and psychiatric records; the evaluations of other experts; the

Rule 4.130 of the California Rules of Court would be amended, effective May 15, 2023, to read:

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)** * * *