

## Mental Competency and Courtroom 14

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Penal Code  
section 1369(f)

• The defendant is presumed to be **competent** to stand trial.

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Penal Code  
1367(a)

• A defendant is incompetent to stand trial if, as a result of a mental disorder or developmental disability, he or she is unable to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner.

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### Step 1 – Declaring a doubt

- Defense counsel
- The Court
- The People?

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### Burden of Proof?

- Substantial evidence
- This gets more complicated the more serious the case gets
- Options:
  - Appoint an expert
  - Defense has in camera hearing
  - Court accepts defense's representation
  - Court declares doubt based on its observations

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### Step 2 – Appointing an Expert

- Criminal proceedings are suspended
- Expert is appointed
  - If defense seeking finding of incompetence – one expert
  - If defense NOT seeking finding of incompetence – two experts
- Expert evaluation
  - In custody or out of custody
- Expert report
  - Submit?
  - Jury Trial?

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Submit

- Continued for placement recommendation

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Jury Trial

- Both sides are entitled to a jury trial on the issue of competency
- Waive jury?
  - Burden of proof is on the side claiming the defendant is NOT competent
- Burden of proof is preponderance standard
- Expert testifies + any other relevant witness
- Defense attorney can testify. Privilege?

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Step 3—  
Placement and  
Treatment

- If defendant is mentally disordered and charged with a misdemeanor, follow PC section 1370.01
- Once the defendant is found to be incompetent, VCBH takes over
  - Outpatient vs. inpatient treatment
    - How is this determined?

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### Inpatient vs. Outpatient

- Inpatient
  - Sylmar
  - Hillmont
  - Tri-Counties
- Outpatient
  - Ventura County Behavioral Health
  - Assist/RISE Teams
  - Dr. Ronya Livingston
  - Group home
- Outpatient and FTAs?

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### Medication Orders

The Court can order forced medication or the defendant can agree to medication

- Forced medication?
    - PC 1370.01(a)(2)(B)(i) If defendant does not consent, court must determine:
      - 1) Defendant lacks capacity to make decisions re: meds, defendant's mental disorder requires antipsychotic medication, if not treated with meds, it is probable serious harm to patient would result
      - 2) Is defendant a danger to others?
      - 3) Have People charged defendant with serious crime against person or property?
- If court finds any of those three conditions to be present, the court shall issue an order authorizing treatment facility to involuntarily administer antipsychotic meds.

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### Step 4 – Treatment and Restoration

- Certificate of Competency
- Status updates
- No substantial likelihood?

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### No Substantial Likelihood?

- We do not have to stipulate to it. DA's in other counties have successfully argued that we have a right to a Court Trial on the issue. (pursuant to cases of *People v. Murrell* (1987) 196 Cal.App.3d 822 and *People v. Nixon* (1990) 225 Cal.App.3d 1471.)

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### Treatment Timeline

- Can only be confined for the maximum term of imprisonment for the most serious offense charged on the misdemeanor complaint
- *People v. G.H.*, 230 Cal.App. 4th 1548
  - Pre-commitment custody does NOT count towards the period of confinement for treatment, under 1370.
- Motions to dismiss based on 1370.2
  - WRITE AND FILE RESPONSES
  - DA is entitled to 10 days notice
  - Potential registration? Stay aways? Priorable?
  - Not maxed out

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### Step 5 – Dismissal, Restoration, or Conservatorship

- PC 1370.01(c)(2): If it appears to court that defendant is gravely disabled, court shall order the conservatorship investigator of county to initiate conservatorship proceedings
- Case dismissed
  - Restoration of competency
  - Criminal proceedings reinstated
  - Trial date set

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Etc.

- Please put your files in the cart
  - Letters need to be in files
    - This allows the calendar DDA to see the defendant's treatment compliance
  - If the defense has filed a written motion to dismiss, respond in writing
- Keep in mind that each case is its own – i.e., PDs put all of their case numbers on one motion. Its easy to get credit calculations confused this way.
- Appear on your own motions or leave notes (only if we are submitting)

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