

Incompetent to Stand Trial (IST): IST defendants are determined by the court to be unable to participate in their trial because they are not able to understand the nature of the criminal proceedings or assist counsel in the conduct of their defense. When the court finds a defendant incompetent to stand trial, he/she can be committed to DSH to provide clinical and medical services with the goal of restoring their competency and enabling them to return to court to resume their criminal proceedings. Per Assembly Bill (AB) 133, as of July 27, 2021, only defendants with felony charges may be committed to DSH. Defendants with misdemeanor charges (1370.01) can no longer be committed to DSH.

Penal Code section 1370, subdivision (c)(3): Whenever a defendant is returned to the court pursuant to Penal Code section 1370, subdivisions (b)(1) or (b)(4) and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code (WIC), the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings.

WIC section 5008, subdivision (h)(1)(A) Lanterman-Petris-Short (LPS) Conservatorship: Individual is "gravely disabled" defined as: a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter

WIC section 5008, subdivision (h)(1)(B) Murphy Conservatorship: Individual is "gravely disabled" defined as: A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and certain facts exist including the complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person; as a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against him/her and to assist counsel in the conduct of his/her defense in a rational manner; the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.

Penal Code section 1372, subdivision (e): Known as an EIST, this is a defendant who has been issued a certificate of restoration of competency, but as recommended by the facility Medical Director, and approved by the court, the defendant shall remain at the facility, e.g., state hospital, for continued treatment through the criminal proceedings in order to maintain competency.

IST Restoration of Competency Treatment Pathways

Upon admission to a state hospital, AES, or JBCT, ISTs receive a Competency Barriers Assessment (CBA) to determine their primary barrier to competency in order to provide efficient and focused treatment.

Competent

CBA Result: Defendant is identified as likely competent or close to

competent.

15 Months

21 Months

24 Months

Language and/or Cultural Barrier

CBA Result: Defendant is flagged with language and/ or cultural barriers to competency.

CBA Result: Suspected malingering is noted.

Cognitive Disorder

CBA Result: Cognitive disorder noted as a primary barrier to competency.

Psychotic Disorder

CBA Result: Psychotic disorder noted as a primary barrier to competency.

Non-Restorable

CBA Result: Defendant is flagged as likely to be non-restorable.

*An individual may be shifted from one pathway to another or treated on more than one pathway at a time.

Statutory Required Reports & Timeline

Statutory required reports are time sensitive and driven by a defendant's length of stay (LOS). Reports may result in hearings and testimony.

90 Days Initial 90-Day Competency Report 9 Months 1st Competency Progress Report

2nd Competency

Progress Report

3rd Competency

Progress Report

Penal Code section

1370, subdivision (c)(1)

Initial 90 Day Competency Report:

Malingering

■ Statute requires that within 90 days of commitment to DSH, the Medical Director of the state hospital or designee shall make a written report concerning the defendant's progress toward recovery of mental competence. DSH may submit a report under Penal Code section 1370, subdivision (b)(1) for a re-evaluation done on a defendant still in county custody.

Competency Progress Report:

- Statute requires that at 6-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the Medical Director or person in charge of the facility to report in writing the defendant's progress toward recovery of mental competence.
- These are updates to the initial report.

Competency Progress Report:

Completed 6 months from previous progress report.

Competency Progress Report:

■ Completed 6 months from previous progress report.

Penal Code section 1370, subdivision (c)(1):

- AB 133 amended Penal Code section 1370, subdivision (c)(1) and added subdivision (c)(2), requiring committing county Sheriffs to take custody of IST defendants from DSH within 10 days-notice that the relevant IST defendant(s) is within 90-days of their maximum commitment date following notice to the Sheriff by DSH.
- If an IST reaches the end of his/her commitment term, they can be conserved pursuant to the LPS Act WIC section 5008, subdivisions (h)(1)(A) or (h)(1)(B) (Murphy Conservatorship).

Discharge Reports

Discharge report options not driven by LOS. Reports may result in hearings and testimony.

Penal Code section 1372 – Certificate of Restoration

- If it is determined that the defendant has regained mental competence the Medical Director of a state hospital or designee, or director of other facility to which the defendant is committed, shall immediately certify that fact to the court by filing a certificate of restoration.
- The defendant shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration.

Penal Code section 1370, subdivision (b)(1) – Unlikely to Regain Competency Report

- Pursuant to Penal Code section 1370, subdivision (b)(1), if it is determined that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, a report will be provided to the committing court. AB 133 (Chapter 133, Statutes of 2021) amended Penal Code section 1370, subdivision (b)(1)(A) and added subdivision (b)(1)(c), requiring committing county Sheriffs to take custody of IST defendants from DSH and return them to county custody within 10 days-notice that the relevant IST defendant(s) is unlikely to be restored to competence within the foreseeable future following notice to the Sheriff by DSH. AB 133 (Chapter 133, Statutes of 2021) further provides that, if the committing county Sheriff does not take custody of the defendant from DSH in this time frame, the committing county will be financially responsible for the relevant defendant's on-going cost of care, as determined by DSH's operative daily bed rates for civilly committed patients.
- This report can be completed at any point during a defendant's stay.
- If it appears to the Court that the defendant is gravely disabled, the Court shall order a conservatorship investigation by the county. The county may pursue an LPS or Murphy Conservatorship.

Penal Code section 1370, subdivision (c)(1) – Maximum Term Commitment Report

- Penal Code section 1370, subdivision (c)(1) states that no later than 90 days from a defendant's maximum commitment, a defendant who has not regained competence shall be returned to the committing court. AB 133 (Chapter 133, Statutes of 2021) amended Penal Code section 1370, subdivision (c)(1) and added subdivision (c)(2), requiring committing county Sheriffs to take custody of IST defendants from DSH within 10 days-notice that the relevant IST defendant(s) is within 90-days of their maximum commitment date following notice to the Sheriff by DSH. AB 133 (Chapter 133, Statutes of 2021) further provides that, if the committing county Sheriff does not take custody of the defendant from DSH in this time frame, the committing county will be financially responsible for the relevant defendant's on-going cost of care, as determined by DSH's operative daily bed rates for civilly committed patients.
- An IST can be conserved pursuant to the LPS Act WIC section 5008, subdivisions (h)(1)(A) or (h)(1)(B) (Murphy Conservatorship).