

OFFICE OF PATIENTS' RIGHTS

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M E M O R A N D U M

TO: Patients' Right Advocates

FROM: Michele Mudgett, Patients' Rights Specialist
Office of Patients' Rights

RE: Adovcacy Tools - Penal Code 1370 - IST

DATE: May 15, 2001

Enclosed you will find an overview on the commitment scheme of Penal Code 1370, "Incompetent to Stand Trial". Persons under this commitment are placed in County Jail, State Hospitals and/or community placement. This commitment scheme may at times lead to a conservatorship.

Persons committed under this section of the Penal Code are committed directly from the Superior Courts. The information in this letter is a summary only; for greater detail see the applicable statute and relevant case law.

PC §1370 – Incompetent to Stand Trial (IST):

IST shall apply to a defendant that cannot participate in the trial as a result of a mental disorder. As a result of this mental disorder the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. The court then commits the defendant for treatment designed specifically to enable the defendant to proceed with a trial. Treatment usually consists of hospitalization in an inpatient setting. Within 90 days of placement, the facility designee must submit a written progress report to the committing court. The maximum felony IST commitment time is either three years or the maximum term of imprisonment for the most serious charge, whichever is less. If defendant has not regained competence to stand trial by that time, the defendant must be released or, if specified criteria is met, additional hospitalization can be facilitated under a “Murphy Conservatorship” under the Lanterman-Petris-Short (LPS) Act.

Definition of Incompetent:

A person cannot be tried or adjudged to punishment while mentally incompetent. Incompetent means as a *result of a mental disorder or developmental disability*, the defendant is unable to understand;

The nature of the criminal proceedings

And/or

To assist counsel in the conduct of a defense in a rational manner.

The legal counsel and/or the court may bring into question the defendant’s competency and when either of the above occurs. The court could order the defendant to be referred for evaluation and treatment. The criminal prosecution will then be suspended until such time an evaluation and treatment has been concluded. Once concluded, the defendant shall be returned to court and the criminal process will resume.

Length of Time Served:

For a Felony IST the commitment ends when:

The maximum allowable time in the treatment facility has been reached.

OR

*Competency has been reached, **standing trial

OR

The pending charges have been dropped

*If competency has not been gained after 18 months of treatment, a new competency trial must be held.

**Time Served during the hospital or outpatient program, will be credited if a sentence is rendered as a result of the trial.

A Writ of habeas corpus may be filed to challenge the commitment. In addition, the patient may contest facility's recommendations in the progress reports that are made to the courts every 6 months.

PC §1370.1 – Incompetent to Stand Trial (IST) due to developmental disability.

“(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgement shall be suspended until the defendant becomes mentally competent.” A defendant may be placed in a state hospital, developmental center, or residential facility. A placement hearing will be held to make the determination. If the underlying charge is a violent felony, a secured perimeter or locked and controlled treatment facility will be utilized.

PC § 1370.01 – Incompetent to Stand Trial (IST) for misdemeanor offenses.

Defendants found incompetent to stand trial usually receive their evaluation and treatment at a county mental health facility, rather than a State Hospital. If there is no less restrictive appropriate placement available and a contract for the State Hospital treatment exists between the county and the Department of Mental Health. The maximum commitment for a misdemeanor incompetent to stand trial defendant is one year or the longest permitted prison sentence for the crime charged whichever is shorter.

PC § 1372 – Restoration of Competency.

If the treatment facility believes that the defendant has regained competency, the facility will file a Certificate of Restoration of Competency with the court. The patient will be returned to the committing court within 10 days of the filing of the Certificate. If a recommendation is given that the defendant has regained competency and the judge has reason to believe that the defendant remains incompetent, the judge may order the question of competency to be determined in a hearing.

PC § 1372(e) – Continued Hospitalization

Once a patient has a Certificate of Restoration of Competency, a transfer back to the committing county to proceed with the trial will take place. At the discretion of the court, upon recommendation of the director the patient may stay in the treatment facility pending the appearance in court. It must be established that there is a need for continued treatment in a hospital or treatment program in order to maintain competence to stand trial or that the jail environment would create as substantial risk.

“Murphy conservatorship or Mur-Con”

If at the end of the IST commitment period, the patient may be retained for further treatment if the following criteria are met:

Remain incompetent

OR

Have an undismissed indictment (or information with a violent felony charge)

AND

Present a substantial danger of physical harm to others.

This lasts for one year, just like any other conservatorship. This commitment can be extended indefinitely if a new conservatorship is obtained each year. Murphy conservatees have the right to a yearly court review and/or jury trial, and have the same rights as other LPS conservatees.