



California's Protection & Advocacy System  
Toll-Free (800) 776-5746

# Self Advocacy for Incompetent to Stand Trial Commitment

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## **Under what circumstances can I be found Incompetent to Stand Trial (IST)?**

California law states that you can be found Incompetent to Stand Trial (IST) when, because of a mental disorder or developmental disability, you cannot:

- 1) Understand the criminal proceedings against you
- OR**
- 2) Assist your lawyer in conducting a defense in a rational manner

Being found IST has nothing to do with whether you are guilty or not guilty of the crime(s) you are charged with.

## **How long can I be kept at the hospital under an IST commitment?**

An Incompetent to Stand Trial (IST) commitment ends when either:

- 1) The maximum time for commitment runs out
- OR**
- 2) You are certified competent by the court

California law limits Incompetent to Stand Trial (IST) commitments for someone charged with a felony to a maximum of 3 years or the maximum term of imprisonment, whichever is shorter.

For example, let's say John Doe was charged with one count of robbery, one count of assault and one count of auto theft. Before his trial started, he was found IST and sent to a state hospital to regain competency. In theory, his maximum IST commitment at the hospital would be 3 years, **not** 3 years for each count.

If you were charged with a misdemeanor, the maximum IST commitment is 1 year or the longest prison sentence, whichever is shorter.

It is important to know that even if you have reached the maximum time of confinement, you can be put on other types psychiatric commitments that

extend your time in the hospital, such as a Murphy conservatorship or LPS conservatorship.

### **Does the time spent on an IST commitment count toward a prison sentence if I am convicted?**

Yes. The time spent in the hospital does count toward any prison sentence you may receive. You would also get credit for time spent in an outpatient treatment program if you are placed in one. You do not get good conduct or work credits for pre-sentence commitment to a hospital, treatment facility or outpatient treatment program.

### **Can I be kept at the hospital past the 3-year maximum commitment?**

Yes. One way a commitment can be extended is through a Murphy conservatorship. A Murphy conservatorship extends the time a person can be committed past the 3-year IST maximum commitment. A Murphy conservatorship lasts for 1 year but can be extended each year indefinitely.

A person can be put on a Murphy conservatorship if the court finds:

- 1) A person remains Incompetent to Stand Trial (IST);
- 2) The person is charged with a violent felony; and
- 3) The person is a substantial danger of physical harm to others

If you do not meet the criteria for a Murphy conservatorship, you may be put on an LPS conservatorship. A person can be put on an LPS conservatorship if they have a mental disability or chronic alcoholism and are found by a court to be “gravely disabled.” Being found gravely disabled means that because of chronic alcoholism or a mental disorder, you cannot provide for your food, clothing or shelter.

## **Can I be placed in the community even if I have been charged with a felony?**

Usually you will receive evaluation and treatment at a state hospital. If you have been charged with a violent felony, the court must place you in a state hospital or treatment facility for at least 180 days. After 180 days, you **may** be placed in a conditional release program (CONREP) if the court decides that being in CONREP will not cause a danger to the health and safety of others. CONREP is a statewide mental health outpatient treatment program.

If you are charged with a sex crime and a conviction would require you to register as a sex offender, you will not be eligible for treatment in a CONREP program unless the court decides that you would not be a danger to others and you would get more appropriate treatment in an alternative treatment program.

If you are charged with a non-violent felony, you **may** be placed directly into CONREP.

## **Do I have a right to treatment?**

Yes. You have the right to treatment that will promote speedy restoration to mental competency.

## **Is my IST commitment reviewed?**

Yes. The treatment program where you are placed must send reports to the court on your progress toward becoming competent to stand trial. The first is due within 90 days of commitment.

If, after 90 days in the hospital, you are still not competent to stand trial, and the hospital reports that they think you will become competent in the foreseeable future, you will continue to be treated at the hospital or outpatient program. After the 90-day report, the hospital must send reports about your progress to the court every 6 months.

You have the right to challenge the hospital's recommendation at the 90-day or the 18-month review hearings.

If the progress report states that you are not likely to become competent in the foreseeable future, you must be returned to court for a conservatorship hearing. At this hearing you may be put on an LPS or Murphy conservatorship. If you do not meet criteria for a conservatorship **and** you have reached the maximum term of confinement, the court must release you.

The maximum term of confinement means for example, if you were charged with a non-violent felony and convicted, your sentence would be no longer than 180 days in jail or prison. At the 180-day review hearing, if the hospital said you will not become competent in the foreseeable future, the court will release you because you have already spent 180 days in the hospital. Again, this will only happen if you do not meet the conditions for an LPS or Murphy conservatorship.

Whether you are charged with a violent or non-violent felony, the law states you must be given a new competency trial after 180 days (See Penal Code Section 1369). At this time, the court can decide to keep you in the hospital or put you on an LPS or Murphy conservatorship.

### **How does the court decide if I have become competent to stand trial?**

If the hospital believes you have become competent to stand trial, the hospital sends the court a Certificate of Restoration of Competency. The hospital sends this certificate to the court by certified mail. Then you must be taken back to court no later than 10 days after the filing for a restoration hearing.

At the competency restoration hearing, the court decides if you are now competent to stand trial. If the court decides that you are competent, the court will decide if you can post bail or be released on your own recognizance (released without bail).

Your attorney or the prosecution can also ask the court for a restoration of competency hearing.

You do not have a right to a jury trial at the competency restoration hearing.

At the competency restoration trial, you are presumed or considered competent. If the hospital or the prosecutor believes you are not competent, they have to prove this to the court by a “preponderance of evidence.” This is less proof than “beyond a reasonable doubt.”

### **When the court decides I am competent to stand trial, what happens next?**

When you are found competent to stand trial, the criminal proceedings resume. If you had a preliminary hearing before you were found incompetent to stand trial, you most likely will not get another preliminary hearing. If you were incompetent to stand trial for a short time, your trial would probably continue. If you were incompetent to stand trial for a long time, a mistrial might be declared and a new trial might start. If you have questions about getting a new trial, you would need to talk with your attorney.

If, at your competency restoration hearing, the judge finds you competent, you might be sent back to the hospital to wait until your trial begins. The judge can send you back to the hospital if it is believed that being in jail would put you at risk of becoming incompetent again or if you need continued treatment to keep you competent.

### **Can I challenge being found incompetent to stand trial by filing a writ of habeas corpus?**

Yes

*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.*