



Misdemeanor Incompetence to Stand Trial (IST) Process

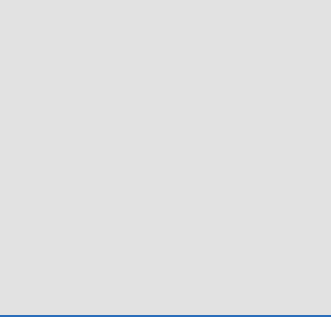
Mental Health and IST Workgroup

Key Terms in the Misdemeanor IST Process

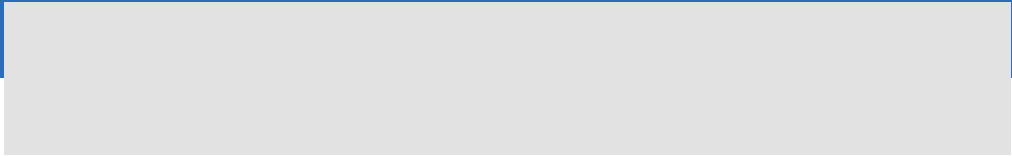
- **Competency to Stand Trial** - Whether a person understands what is happening in court and can assist their attorney.
- **Incompetent to Stand Trial (IST)** - A legal status indicating a person cannot meaningfully participate in their case due to a mental health condition.
- **PC 1368 "Doubt Declared"** - The court pauses a case because someone raises concern about the defendant's competency.
- **Competency Evaluation** - A psychological assessment ordered by the court to determine competency.
- **Misdemeanor IST** - IST process specific to misdemeanor charges, governed by [PC 1370.01](#).
- **Suspension of Proceedings** - When the case is officially paused until the defendant is found competent or the case is otherwise resolved.
- **Mental Health Diversion (MHD)** (PC 1001.36) - A treatment-focused alternative to prosecution for eligible individuals with mental health needs.
- **Diversion Eligibility Hearing** (30-Day Requirement) - A mandatory hearing after a Misdemeanor IST finding to determine whether the person qualifies for Mental Health Diversion.
- **Assisted Outpatient Treatment (AOT)** - A structured outpatient program for individuals needing consistent support to maintain stability.
- **LPS Conservatorship** - A civil court process for individuals unable to care for themselves due to mental illness (Lanterman-Petris-Short Act).
- **CARE Court** - A civil court process offering treatment and support plans for people with severe mental illness.
- **Release Requirement** - If diversion, AOT, or conservatorship is not initiated within legal timelines, misdemeanor IST defendants must be released from custody.
- **Restoration (Felonies Only)** - Attempts to restore competency—not available for misdemeanor cases, which cannot be sent to the Dept. of State Hospitals (DSH) for restoration under state law.

Background: Major Changes

- 2015 [lawsuit filed against the Dept. of State Hospitals](#) (DSH) resulted in March 2019 ruling, upheld in 2021, requiring Incompetent to Stand Trial (IST) clients to be admitted to services within 28 days of receiving criminal court commitment (waitlist at about 300 in 2015 to over 1,700 in 2021)
- In 2018, [AB 1810 and SB 215](#) created Mental Health Diversion for individuals with serious mental health disorders (PC 1001.35-1001.36)
- As of July 27, 2021, per [AB 133](#), ONLY felony defendants found IST may be committed to DSH for restoration, forcing counties to rely on local processes for Misdemeanor IST defendants: Mental Health Diversion (MHD - [PC 1001.36](#)), Assisted Outpatient Treatment ([AOT](#)), [CARE Court](#), LPS Conservatorship
- 2022 [report](#) from CA Committee on Revision of the Penal Code recommended modernization of the Competency to Stand Trial System
- January 2023, per [SB 1223](#), eligibility criteria for MHD significantly expanded
- January 2025, [SB 43](#) expanded definition of grave disability goes into effect in Sacramento County
- January 2025, per [SB 1323](#), IST process changes went into effect including: A presumption of competency, shifting burden of proof; written-report–only determinations permitted unless a party objects; and mandatory decision on capacity for antipsychotic-medication consent (impacts diversion/AOT/LPS decisions)



MISDEMEANOR IST PROCESS OVERVIEW



STEP 1: DOUBT DECLARED (PC 1368)

- **Initiation of Doubt**

The process starts when the Court or legal parties formally raise concern about a defendant's mental competency under PC 1368.

- **Reason for Doubt**

Observed behaviors or reports suggest the defendant may not understand proceedings or participate rationally.

- **Pause of Proceedings**

Criminal proceedings pause to protect due process and ensure no trial occurs while the defendant is incompetent.

- **Legal and Protective Focus**

Shift from prosecution to assessment to protect public safety, due process, and treatment needs.

STEP 2: COURT SUSPENDS CRIMINAL CASE PROCEEDINGS

- **Suspension of Legal Proceedings**

Courts suspend all criminal proceedings upon a competency doubt to prevent premature legal actions.

- **Protection of Defendant Rights**

Suspending proceedings ensures defendants understand the process and can contribute to their defense.

- **Compliance with Legal Standards**

This pause adheres to state laws and sets the stage for competency evaluations and hearings.

STEP 3: COURT ORDERS COMPETENCY EVALUATION

- **Role of Mental Health Professionals**

Qualified psychiatrists or psychologists conduct competency evaluations after the court suspends proceedings.

- **Competency Assessment Criteria**

Evaluations determine if defendants understand court processes and can consult rationally with their attorney.

- **Grave Disability Determination**

Evaluators assess if defendants appear gravely disabled based on Lanterman-Petris-Short criteria.

- **Objective and Standardized Evaluation**

Competency decisions are based on clinical interviews, testing, and record reviews to ensure objectivity.

STEP 4: COMPETENCY EVALUATION REPORT SUBMITTED, COURT DETERMINES COMPETENCY

- **Report(s) Submitted to the Court**

After the licensed psychologist/psychiatrist completes the competency evaluation, findings are submitted in an evaluation report to the Court. Counsel reviews report(s) and determines whether they will submit or object to report(s) findings.

- **Court Hearing Process**

The court holds a formal hearing to assess the defendant's mental competency based on the evaluation report. Court will either accept both parties submitting on report(s) or set a contested hearing, if either party objects (procedure set for formal competency trial by [PC 1369](#)).

When a report is contested, the court notes the objection and a report-only decision is no longer allowed. The court schedules a formal competency hearing (a jury trial, or if jury trial right waived, a bench trial) is scheduled, expert may testify, both sides present evidence, and the Court (or jury) makes the competency determination.

- **Competent Defendant Outcome**

If found competent, criminal proceedings resume.

- **Incompetent Defendant Outcome**

If found incompetent, the case moves to treatment-focused post-IST procedures balancing mental health and public safety.

STEP 5: MISDEMEANOR IST DIVERSION ELIGIBILITY HEARING (WITHIN 30 DAYS)

- **Timing of Hearing**

The (mental health) diversion eligibility hearing must occur within 30 days of incompetence finding in misdemeanor cases. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

- **Eligibility Determination**

Court assesses if mental disorder contributed to offense and if community treatment would benefit defendant.

- **Purpose of Diversion**

Diversion offers treatment instead of prosecution, focusing on clinical needs and reducing justice involvement.

- **Duration Limits**

Diversion duration is limited to one year or the maximum sentence for the offense, whichever is shorter.

STEP 6: MENTAL HEALTH DIVERSION, AOT, CARE COURT, CONSERVATORSHIP, & RELEASE

- **Mental Health Diversion Eligibility and Treatment**

Eligible defendants granted diversion receive treatment under PC 1001.36 (Mental Health Diversion) with court-monitored progress for rehabilitation.

- **Alternative Legal Pathways**

If diversion is not suitable, Misdemeanor IST Defendants not granted Mental Health Diversion by the court must be reviewed for qualification (statutorily eligible) and potential referral to Assisted Outpatient Treatment (AOT), CARE Court, or LPS conservatorship, or to have existing treatment plan modified.

- **Timely Release Mandate**

Strict timelines require release on own recognizance after referrals to Mental Health Diversion, AOT, CARE Court or for LPS conservatorship proceedings.

- **Balance of Rights and Safety**

The process balances constitutional rights, public safety, and clinical needs for mental incompetent defendants.

STEP 7: CASE DISMISSAL OR RETURN TO COURT

- **Successful Mental Health Diversion Completion**

When diversion is successfully completed, the court dismisses charges, reflecting rehabilitation over punishment.

- **Incomplete Mental Health Diversion Outcomes**

If diversion or alternative placements fail, court may proceed with statutory remedies such as AOT and CARE Court or further legal action.

- **Legal Protections and Due Process**

End-stage resolutions ensure due process and prevent indefinite cycling through the justice system.



Questions?

If you have any questions about the Misdemeanor Incompetent to Stand Trial (IST) Process or any other content in this presentation, please contact Catherine York at yorkc@sacounty.gov