
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 349 **Hearing Date:** March 28, 2023
Author: Roth
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal procedure: competence to stand trial*

HISTORY

Source: Riverside County District Attorney's Office

Prior Legislation: AB 1630 (Weber), 2021-2022 Leg. Sess., held in Sen. Approps.
AB 133 (Comm. on Budget), Ch. 143, Stats. 2021
SB 1187 (Beall), Ch. 1008, Stats. 2018

Support: California Association of Psychiatric Technicians; California District Attorneys Association; California State Sheriffs' Association; Deputy Sheriffs' Association of Monterey County; Placer County Deputy Sheriffs' Association; Riverside Sheriffs' Association; San Diegans Against Crime; San Diego Deputy District Attorneys Association;

Opposition: California Public Defender's Office; Disability Rights California

PURPOSE

The purpose of this bill is to provide that a certificate of restoration for a defendant who was found incompetent to stand trial shall apply to all cases pending against the defendant at the time of restoration.

Existing law states that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a).)

Existing law requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is incompetent to stand trial (IST). (Pen. Code § 1368, subd. (b).)

Existing law provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code § 1368, subd. (c).)

Existing law provides that if the defendant is found mentally competent, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent. (Pen. Code §1370, subd. (a).)

Existing law states that a person who has been found to be IST may be eligible for mental health diversion. (Pen. Code, § 1001.36, subd. (b)(1)(D).)

Existing law specifies how the trial on the issue of mental competency shall proceed. (Pen. Code § 1369.)

Existing law requires the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. (Pen. Code, § 1369, subd. (a)(1).)

Existing law provides that if the defendant or defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

Existing law states that in a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous. (Pen. Code, §1369, subd. (f).)

Existing law states that only a court trial is required to determine competency in a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen Code, § 1369, subd. (g).)

Existing law states that if the medical director of a state hospital or designated person at an entity contracted by the State Department of State Hospitals (DSH) to provide services to a defendant prior to placement in a treatment program or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director or designee shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested, or by confidential electronic transmission. (Pen. Code, § 1372, subd. (a)(1).)

Existing law provides that the court's order committing an individual to a DSH facility or other treatment facility shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration. (Pen. Code, § 1372, subd. (a)(2).)

Existing law states that the defendant shall be returned to the committing court no later than 10 days after the filing of a certificate of restoration of competency as follows:

- A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.
- The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor. (Pen. Code, § 1372, subd. (a)(3).)

Existing law states that when a defendant is returned to court with a certification that competence has been regained, including upon reevaluation by DSH, the court shall notify either the community program director, the county mental health director, DSH, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence. (Pen. Code, § 1372, subd. (c)(1).)

Existing law states that if the court rejects a certificate of restoration, the court shall base its rejection on a written report of an evaluation, conducted by a licensed psychologist or psychiatrist, that the defendant is not competent. The evaluation shall be conducted after the certificate of restoration is filed with the committing court as specified. A copy of the report as well as a copy of the court order or minute order rejecting the certificate of restoration to DSH, including any order continuing the hearing for the court's determination. (Pen. Code, § 1372, subd. (c)(2).)

Existing law provides that if the committing court approves the certificate of restoration to competence as to a person in custody, the court shall notify DSH by providing a copy of the court order or minute order approving the certificate of restoration to competence. The court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance pending conclusion of the proceedings. (Pen. Code, § 1372, subd. (d).)

Existing law states that if the court approves the certificate of restoration to competence on outpatient status, unless it appears that the person has refused to come to court, that person shall remain on outpatient status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted. (Pen. Code, § 1372, subd. (d).)

Existing law states that a person who has been restored to competence who is not admitted to bail or released on own recognizance may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of their original commitment in order to receive continued treatment to maintain competence to stand trial. (Pen. Code, § 1372, subd. (e).)

This bill states that a certificate of restoration shall apply to any pending case against the defendant at the time the defendant was restored to competence.

COMMENTS

1. Need for This Bill

According to the author of this bill:

This bill adopts the Court's conclusion in *Avila* and clarifies that once a defendant is deemed competent to stand trial in one case, they are competent in all of the cases pending against them at the time that they are initially deemed to be competent. This simple clarification and adoption of the *Avila* decision will avoid unnecessary litigation and conserve judicial and mental health resources.

Redundant evaluations and litigation results in case backlog and delayed justice. In Riverside County for example, it currently takes approximately 6 to 8 weeks to get two doctors' reports; if there is a split in opinion, it can take another 4 to 6 weeks for the tie-breaking report to come to a conclusion on a defendant's mental competence. Repeating that process two or more times over causes an unnecessary strain on what are already limited resources.

2. Background: Mental Competency in Criminal Proceedings

The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

If after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

If the defendant is determined to have regained mental competence after receiving treatment, the treatment provider is required to certify that fact to the court by filing a certificate of restoration with the court. (Pen. Code, § 1372, subd. (a)(1).) The court's order committing the defendant to the treatment facility shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving the copy of the certificate of restoration. (Pen. Code, § 1372, subd. (a)(2).) The defendant shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. (Pen. Code, § 1372, subd. (a)(3)(C).)

The court shall notify the treatment provider of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence. (Pen. Code, § 1372, subd. (c)(1).) If the court rejects a certificate of restoration, the court shall base its rejection on a written report of an evaluation conducted by a licensed psychologist or psychiatrist that the defendant is not competent. The evaluation shall be conducted after the certificate of restoration is filed with the committing court. (Pen. Code, § 1372, subd. (c)(2).)

This bill states that a certificate of restoration shall apply to any case pending against the defendant at the time of restoration.

3. Relevant Case Law

A defendant is presumed competent unless it is proved otherwise by a preponderance of the evidence. In order to be competent to stand trial, "a defendant must have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her." (*People v. Oglesby* (2008) 158 Cal.App.4th 818, 827 citing *People v. Ramos* (2004) 34 Cal.4th 494, 507.) The court has a duty to suspend criminal proceedings to conduct a hearing on a defendant's competency anytime the accused presents substantial evidence of incompetence. (*Ibid.*) This may occur if a doubt arises in the mind of a judge as to the mental competence of the defendant or if counsel informs the court that they believe the defendant is or may be mentally incompetent. (*Ibid.*)

If a competency hearing has been held and the defendant has been found competent to stand trial, a trial court need not subsequently suspend criminal proceedings to conduct another competency hearing unless it is presented with a substantial change of circumstances or with new evidence that casts serious doubt on the pretrial finding of competency. (*People v. Jones* (1991) 53 Cal.3d 1115, 1153.) In the context of multiple cases against one defendant, the court is not prohibited from conducting a single mental competency hearing applicable to all cases pending against the

defendant. (*People v. Avila* (2011) 191 Cal.App.4th 717, 722.) A single competency hearing may avoid “redundant litigation, the theoretical possibility of conflicting trial court rulings, unnecessary delay, and duplicative costs while preserving appellant's right to have the question of his mental competency decided based on the evidence and the law.” (*Id.* at 723.)

This bill extends this rationale to persons who are certified as having their competency restored after a finding of IST by providing that a certificate of restoration of mental competency applies to any cases pending against the defendant at the time that defendant is restored to competence.

4. Author’s Amendments to be Taken in Committee

The author intends to amend this bill in committee to address the opposition’s concerns, including that this bill could affect cases outside the jurisdiction of the court where the doubt of competency was declared and that determination of competency in a minor case, such as theft, may not equate competency in a more serious matter, such as murder. The amendments would provide that if a doubt is declared, there would be presumption that that the doubt exists in all pending cases against the defendant, unless shown otherwise by a preponderance of the evidence, which means more likely than not. Thus, in determining whether the defendant is restored to competency, all of the pending cases should be considered. Additionally, the amendments clarify that the certificate of restoration applies unless the court is presented with a substantial change in circumstances or with new evidence that casts doubt on the defendant’s competency, which mirrors language in the *Avila* case. This presumption would also be rebuttable by a preponderance of the evidence.

Specifically, the author plans to amend the bill to:

(a) Specify that the certificate of restoration applies to any action *before the court* at the time of restoration, unless the court is presented with a substantial change in circumstances or with new evidence that casts doubt on the defendant’s competency.

(b) State that the presumption that the certificate applies is rebuttable by a preponderance of the evidence.

(c) State that upon a declaration of that doubt in one case, the doubt shall be presumed to exist in all cases pending against the defendant within that county, irrespective of the date of filing, until the question of the defendant’s competence is resolved. This presumption is rebuttable by a preponderance of the evidence.

(d) Require the court to retain jurisdiction of all criminal cases pending against the defendant within the county after a declaration of doubt for the purpose of determining his or her competence.

5. Argument in Support

According to California District Attorneys Association:

The Court of Appeal held in *People v. Avila* (2011) 191 Cal.App.4th 717 that if a defendant is competent to stand trial in one case, they are competent in all of their

cases. The Court's concerns were redundant litigation, a theoretical possibility of conflicting trial court rulings, unnecessary delay, and duplicative costs of conducting separate competency evaluations for each case pending against the defendant at the same time. However, there is currently not an express provision under Penal Code section 1372 that provides that the certificate of restoration applies to all cases pending against the defendant at the time that they are deemed legally competent. By codifying *People v. Avila* and clarifying that a certificate of competency applies to all cases pending against a defendant at the time that he or she is restored to competence, we avoid redundant litigation, an unnecessary strain on limited judicial resources, and subjecting legally competent defendants to unnecessary evaluations.

6. Argument in Opposition

According to the California Public Defenders Association:

When a person is found incompetent to stand trial, that person is committed to treatment to restore their competency on the case for which they were committed. When the treatment facility submits a certificate of restoration, that certificate is based on the person's ability to understand and participate in that particular case.

SB 349 amends the State's competency procedures to require that a certificate of restoration apply to any case pending against the person at the time a certificate issues, regardless of jurisdiction or the nature of other pending cases.

Although the standard for competency does not vary from case to case, a person's ability to understand or to assist their attorney may. The demands on a person charged with a petty theft differ substantially from those placed on a person charged with a homicide. An individual's delusional belief system on one case may not transfer to another.

SB 349 does not consider that a person who is competent on one case may not be competent on another. But this bill would require courts to apply a certificate of restoration to all cases, even where no medical expert has opined that the person is competent to proceed.

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