

DEPARTMENT OF STATE HOSPITALS  
UPDATED INFORMATIVE DIGEST

**Incompetent to Stand Trial Admissions Process**

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospital Operations  
Article 7. Admissions

The court has recognized that counties must provide to the Department of State Hospitals (DSH) complete information packets to enable DSH to evaluate each defendant committed to the Department as Incompetent to Stand Trial (IST) and subsequently place that defendant in the most suitable setting. (*In Re Loveton* (2016) 244 Cal.App.4th 1025.) DSH addresses this in proposed section 4712 which details the documentation that DSH requires to evaluate and place an IST defendant.

These proposed regulations also address the court's holding in *People v. Mixon* (1990) 225 Cal.App.3d 1471 which was upheld and applied by the court in *People v. Rells* (2000) 22 Cal.4th 860. In both cases, the courts found that when an IST defendant has been found competent and restored, there is a presumption of mental competence which may be overcome by a finding, upon a preponderance of the evidence, of the defendant's mental incompetence. DSH addresses this holding in proposed section 4710, subsection (c) which provides a queueing procedure and clarifies for the courts the order of admission for an IST defendant – determined by DSH to have been restored – whose competence is challenged, who is subsequently found incompetent, and who is committed again to DSH for competency restoration.

Since the Notice of Proposed Action dated January 13, 2017, there has been one change in applicable law relating directly to the proposed regulations. Assembly Bill 103, chaptered by the Secretary of State on June 27, 2017, provides that DSH may place an IST defendant in a county jail treatment facility, otherwise referred to as a jail-based competency treatment program, for competency restoration. This change in applicable law is reflected in the modifications to the originally proposed text.

There have been no other changes in applicable law or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.