



# Issue Brief: Incompetent to Stand Trial

## What does it mean to be deemed Incompetent to Stand Trial (IST)?

According to state and federal law, all persons who face criminal charges must be mentally competent to assist in their legal defense. In other words, a defendant must understand the nature of their charge(s) and the court proceedings for their trial to continue. Therefore, an individual who is deemed incompetent to stand trial (IST) lacks the mental competency required to participate in legal proceedings.

## What is the process for determining competency?

Penal Code §§1367 – 1376 establishes the process for determining competency. A doubt of competency can be declared pre-trial, throughout the duration of a trial, or prior to sentencing. When an individual is charged with a crime, a doubt of competency can be raised by the judge or defense counsel, typically due to a mental illness or intellectual disability. Once a doubt is raised, the court orders a hearing to determine the defendant's mental competence. The court is required to appoint a psychiatrist, licensed psychologist, or any other expert they deem appropriate – commonly referred to as an “alienist” – who examines the defendant and evaluates the nature and severity of their mental disorder. Following the evaluation, the alienist provides a report on the defendant's ability to understand criminal proceedings and whether neuroleptics (also known as “antipsychotics”) are an appropriate treatment.

If an individual is deemed competent – and the judge, defense, and prosecution agree with the findings – the criminal trial resumes. However, if the defense contests the finding, an additional hearing is held where the defense must prove by a preponderance of the evidence that the individual is IST. If an individual is deemed IST – and the judge, defense, and prosecution agree – the court orders a

placement evaluation conducted by the Department of State Hospitals (DSH) to determine the appropriate treatment, whether in a DSH inpatient facility or an outpatient program for “competency restoration.”

## What happens after someone has been deemed IST? How is someone restored to competency?

Individuals deemed IST may be treated at the state or local level. After receiving a placement evaluation, they can be referred to DSH (or as it currently stands, added to the department's felony IST waitlist) for appropriate treatment to address mental health issues, medication needs, and training of criminal procedures; referred for local jail-based competency treatment, which mirrors DSH treatment; or receive early access to stabilization services (EASS) in participating counties, while waiting for higher level treatment placements. Defendants may also enter a local diversion or community-based restoration program upon a judge's order; if successfully completed, their charges may be dropped. Throughout the competency restoration process, court-imposed quarterly review hearings and competency re-evaluations may also take place. If an individual is restored to competency, criminal proceedings will resume. According to DSH, as of July 3, 2023, the IST waitlist consists of 871 individuals.

## What government entities play a role in the IST process?

- **Behavioral Health** – provides mental health services to treat individuals with mental illness.
- **Courts** (judges, court-appointed alienists, staff) – judges are responsible for sentencing convicted criminal defendants, determining competency, ordering placement and treatment, and alienists conduct evaluations and provide reports to the court.
- **District Attorneys** – responsible for the prosecution of individuals charged with a criminal offense(s).
- **Public Defenders** – provide defendants with criminal defense services.
- **Sheriffs** – make arrests, participate in court proceedings, and operate local detention facilities.
- **Probation** – assists clients with rehabilitation and reintegration, prepares reports and recommendations for the court, and communicates with judges, counsel, health and behavioral health providers, and other partners.
- **Department of State Hospitals (DSH)** – manages the five state hospitals that provide mental health services to patients admitted by a criminal or civil court. DSH serves individuals who have been accused of or have committed an offense linked to their mental illness, including the IST population.

**Problem: DSH waitlist** – the state continues to experience a growing number of felony IST commitments, who are referred from trial courts and are awaiting admission to a state hospital. Concerns with the waitlist were at a high after the June 2021 *Stiavetti v. Clendenin* appellate court order, which requires DSH to provide substantive competency restoration services for all individuals deemed IST within 28 days of receipt of the commitment packet from the court.

## How does the system and funding work?

The treatment process for the IST population is difficult to summarize as individuals may touch various county agencies such as behavioral health, probation, and sheriffs' departments. While the impacted governmental bodies previously referenced are eligible and receive varying levels of federal and state funding, many are funded through a county's general fund (with the exception of the courts). Accordingly, counties contribute significantly to the IST process and are deeply invested in reducing the IST population.

Two examples of agencies that play a critical role in the IST process are county behavioral health departments and public defender offices. County behavioral health agencies that provide critical treatment services receive funding through the Mental Health Services Act (MHSA), state sales taxes, income taxes, vehicle registration fees, Medi-Cal, and county general fund dollars. Public defender offices receive funding primarily through county general fund investments and access to federal and state grants. Recently, the state has significantly invested in the IST treatment process. However, these investments do not adequately cover the full cost incurred by counties to treat the rising demand of those deemed IST.

Last year, the Administration approved an "IST Solutions Package" to address the growing IST waitlist for DSH placement, which included:

- \$638 million General Fund annually, beginning 2025-26 to support: early stabilization and community care coordination; expansion of diversion and community-based restoration capacity; improve discharge planning and coordination; improve the quality of alienist evaluations.
- \$468.8 million in one-time grant funding to California counties to build, acquire, or develop residential housing settings for people who have been deemed IST.

Notably, the IST solutions package also included the establishment of a county growth cap and penalty program. As part of the solution to reduce both the state's wait times for treatment and the department's waitlist, DSH has been focusing on the expansion of diversion and community-based restoration within all counties. Counties that exceed their "cap" (based on IST commitments from previous years) must pay a penalty when the number of court IST determinations increase in a county. This approach is counterintuitive given that counties do not control IST determinations. If the IST population continues to rise, a cap and penalty program will simply result in reduced funding to effectively develop additional strategies and programs aimed at early intervention and prevention.