

IST DETERMINATION PROCESS FOR MISDEMEANOR DEFENDANTS

PRE-TRIAL

Court must suspend criminal proceedings and initiate competency proceedings (P.C. § 1367, et seq.)

APPOINT EXPERT(S)

Competency evaluation must include whether the person, if not incarcerated or in another type of secured facility, appears to be gravely disabled (per LPS definition). If there is reason to suspect D may be developmentally disabled, P.C. § 1370.01 does not necessarily apply

DETERMINE COMPETENCY

If D is found competent, criminal proceedings are reinstated, and trial must commence within 30 days, absent the consent of D or good cause

POST-IST FINDING

Court must conduct a hearing within 30 days and determine whether D is eligible and suitable for diversion pursuant to P.C. § 1001.36

D cannot be diverted without consent, and involuntary treatment is not authorized. D also need not waive statutory speedy trial rights.

POST-JUDGMENT

When a doubt arises as to the mental competency of a D subject to a probation revocation proceeding, the court must suspend revocation proceedings and initiate competency proceedings. If D is found mentally competent, the court must dismiss the revocation matter and either terminate probation or reinstate probation (*nunc pro tunc* to the date when it was summarily revoked), modifying the terms and conditions to include mental health treatment, if appropriate

Eligible/Accepted

If D performs satisfactorily in diversion, **charges must be dismissed**

A finding that D suffers from a mental health disorder or disorders rendering D eligible for diversion, any progress reports concerning D's treatment in diversion, or other records related to a mental health disorder or disorders that were created as a result of participation in, or completion of, diversion or for use at a hearing on D's eligible for diversion under this Section, may not be used in any other proceeding without D's consent, unless that information is relevant evidence admissible under the standards described in Article I, Section 28(f)(2) of the California Constitution

Maximum period of diversion can be no longer than *one year* or the maximum punishment for the most serious misdemeanor charge, *whichever is less*

Ineligible/Denied

If D is ineligible or is denied diversion (or washes out), the court must refer to the County agency responsible for AOT and Conservatorships (LPS) and set a hearing no later than 45 days from the denial of diversion. If D is not accepted for AOT or held in a secured facility due to the initiation of a T-CON by that hearing date, he must be released from jail (if incarcerated) and ordered to return for the hearing

AOT

If D is ordered into AOT, **charges must be dismissed**

No AOT

If there is no AOT in the County or D is not accepted into AOT, charges must be dismissed, unless a conservatorship investigation is underway at the 45-day mark. If a conservatorship investigation is underway, court can continue for 15 days (total of up to 60 days). If not, D must be released

If the outcome of the LPS proceeding results in a conservatorship being established over D's person, **the charges must be dismissed**

If, at the 60 day hearing, D is not the subject of LPS or AOT, D must be released and **charges must be dismissed**