

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR18-17

Title	Action Requested
Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2)	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 4.131	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Sarah Fleischer-Ihn, 415-865-7702
Hon. Tricia A. Bigelow, Chair	Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes the adoption of a California rule of court relating to determinations of probable cause under Penal Code section 1368.1(a)(2). Senate Bill 684 (Bates; Stats. 2017, ch. 246), effective January 1, 2018, amended Penal Code section 1368.1(a)(2) to allow a prosecuting attorney to request a probable cause determination for a defendant who is incompetent to stand trial, if the complaint charges specified offenses and the probable cause determination is sought “solely for the purpose of establishing the defendant is gravely disabled” under Welfare and Institutions Code section 5008(h)(1)(B), commonly referred to as a Murphy conservatorship.

The Proposal

This proposal would add a rule of court addressing procedures for probable cause determinations under Penal Code section 1368.1(a)(2). The statute states that the probable cause determinations are to be conducted “pursuant to procedures approved by the court” and that, “[i]n making this determination, the court shall consider using procedures consistent with the manner in which a preliminary examination is conducted.”

The proposed rule provides for the following:

- The prosecuting attorney must serve and file notice of a request for a determination of probable cause at least 10 court days before the hearing;
- A judge must hear the determination of probable cause unless there is a stipulation by

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

both parties to having the matter heard by a subordinate judicial officer;

- A defendant need not be present;
- The one-session requirement of Penal Code section 861 does not apply; and
- Transcripts must be provided in the same manner as they are for preliminary examinations.

Alternatives Considered

The committee alternatively considered additional provisions for the proposed rule, but determined that the current, limited proposal would provide appropriate guidance to the courts and justice system partners.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements, costs, or operational impacts are expected. The proposal is intended to mitigate the court's workload by providing guidance and parameters for procedures for determinations of probable cause.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.131, at page 3
2. SB 684 (Stats. 2017, ch. 246),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB684

Rule 4.131 of the California Rules of Court would be added, effective January 1, 2019, to read:

1 **Rule 4.131. Probable cause determinations under section 1368.1(a)(2)**

2
3 **(a) Notice of a request for a determination of probable cause**

4
5 The prosecuting attorney must serve and file notice of a request for a determination
6 of probable cause on the defense at least 10 court days before the time appointed
7 for the proceeding.

8
9 **(b) Judge requirement**

10
11 A judge must hear the determination of probable cause unless there is a stipulation
12 by both parties to having the matter heard by a subordinate judicial officer.

13
14 **(c) Defendant need not be present**

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16 A defendant need not be present for a determination of probable cause to proceed.

17
18 **(d) Application of section 861**

19
20 The one-session requirement of section 861 does not apply.

21
22 **(e) Transcript**

23
24 A transcript of the determination of probable cause must be provided to the
25 prosecuting attorney and counsel for the defendant consistent with the manner in
26 which a transcript is provided in a preliminary examination.