

## Pre-Trial Motions

### *Competency Hearing*

If you are diagnosed with any mental illness, developmental or intellectual disability that affects your ability to communicate with your lawyer or understand what's happening in your trial, you have a right to a competency hearing.<sup>1</sup> If the judge has doubts about your competence to stand trial they will suspend the proceedings.<sup>2</sup> An expert will then ask you questions, review all your records, and give their conclusion to the judge.<sup>3</sup> If the judge finds you capable of understanding the proceeding and cooperating with your lawyer the case will continue as it did before.<sup>4</sup> If the judge finds you incompetent, by a preponderance of evidence, the proceedings will remain suspended until the judge can determine if you will reasonably gain competence in the foreseeable future.<sup>5</sup> If the judge finds that you will not achieve competency within six months, the court will dismiss the petition.<sup>6</sup>

\*PARENTS: (see *For Parents & Guardians* for more info).

### *Pitchess Motions*

A Pitchess motion allows you to request to inspect a law enforcement officer's personnel file for evidence of police misconduct.<sup>7</sup> Your lawyer may bring a Pitchess motion if he or she suspects officers may have exhibited prejudicial acts, falsified evidence, used excessive force, or otherwise acted improperly.<sup>8</sup>

First your lawyer must file a written motion with the court.<sup>9</sup> The most important part of filing a Pitchess motion is the sworn testimony (affidavit). In order to move forward with the motion the affidavit must show "good cause" by demonstrating sufficient facts which show why such information is necessary and relevant to the issues in your case.<sup>10</sup>

The judge might then give your lawyer information about whether the officer does have something in their past that could help your case. However, your lawyer might have to

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<sup>1</sup> *James v. Superior Ct.*, 77 Cal. App. 3d 169, 175 (Ct. App. 1978).

<sup>2</sup> Cal. Welf. & Inst. Code § 709(a)(1).

<sup>3</sup> Cal. Welf. & Inst. Code § 709(b)(3).

<sup>4</sup> Cal. Welf. & Inst. Code § 709(d).

<sup>5</sup> Cal. Welf. & Inst. Code § 709(e).

<sup>6</sup> Cal. Welf. & Inst. Code § 709(h)(3).

<sup>7</sup> *Pitchess v. Superior Ct.*, 11 Cal. 3d 531, 538 (1974); see also *San Jose v. Superior Court*, 5 Cal. 4th 47, 54 (1993) (holding that Pitchess discovery applies to juvenile proceedings).

<sup>8</sup> *Id.*

<sup>9</sup> Cal. Evid. Code § 1043(a).

<sup>10</sup> Cal. Evid. Code § 1043(b)(3).

locate and interview other people who have complained about the officer to determine if it's useful for your case. This may take a while.

### *Suppression Hearing (based on 4<sup>th</sup> amendment)*

A motion to suppress evidence is a pretrial motion used to exclude any evidence obtained by way of an illegal search or seizure (based on the Fourth Amendment). Your lawyer can exclude evidence at trial to either improve your chances of winning at trial, or to bargain for a better plea deal. The motion must be heard prior to your adjudication.<sup>11</sup>

### *Miranda Hearing*

*"You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to have an attorney present now and during any future questioning. If you cannot afford an attorney, one will be appointed for you at no cost."*  
*-Miranda Rights*

A police officer and probation officer is required to notify you of these Miranda Rights before they question you. A lawyer must be with you when they are questioning you. If a lawyer was not there when you were questioned, if you did not understand your rights as they were read to you, or if you did not waive your Miranda rights, you can have a Miranda hearing. This will happen before your adjudication. At this hearing your lawyer will try to get anything you said that was a violation of your Miranda rights "thrown out" of court so your statements can't be used against you at your adjudication.

### *Trombetta Hearing*

When evidence that would be helpful to your case was destroyed by the police or prosecutor, or they failed to preserve evidence, and no comparable alternatives can be obtained by reasonable means, then your lawyer can file a Trombetta motion.<sup>12</sup> This does not mean police or prosecutors have to collect evidence, but they must preserve it.

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<sup>11</sup> Cal. Welf. & Inst. Code § 700.1.

<sup>12</sup> *California v. Trombetta*, 467 U.S. 479, 485-488 (1984).