

demographics in the first place? Can ASPD, a diagnosis that requires failure to conform to lawful behaviors as indicated by repeated arrests according to diagnostic criteria in the DSM-5, be accurately applied to reoffenders in both of the previously mentioned demographics? If so, can any reoffending individual then be civilly committed based on the SVP statute as currently written? The evolution of SVP standards will hinge on how these issues are considered by the legal and psychiatric communities.

## Refiling Charges on an Unrestored Defendant

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**Defendant Previously Found Incompetent to Stand Trial Can Be Rearrested on a Refiled Felony Charge and a New Competency Hearing Can Be Ordered**

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In *Jackson v. Superior Court*, 406 P.3d 782 (Cal. 2017), the California Supreme Court considered whether the state legislature intended for commitment for competency restoration for the maximum period authorized by law to be a categorical bar to further criminal proceedings.

### Facts of the Case

Patrick Lowell Jackson was charged with felony sexual misconduct. The trial court found Mr. Jackson incompetent to stand trial, and he was ordered to receive treatment for restoration at a state hospital. Mr. Jackson did not regain competence within California's three-year statutory maximum period for involuntary commitment for a felony charge. He was returned to the trial court, and proceedings for civil conservatorship were initiated. However, Mr. Jackson did not meet criteria for conservatorship and was released from custody.

Three days later, the prosecution obtained a grand jury indictment for the identical charge for the identical alleged conduct, as permitted under Cal. Penal Code § 1387 (2013), and moved to dismiss the original complaint. Mr. Jackson was rearrested. A doubt as to his competence was raised again, and the criminal proceedings were again suspended.

Mr. Jackson did not have a second competency hearing, however, because the defense moved for Mr. Jackson's release, arguing that a defendant could not be confined in connection with refiled charges after already being committed for the maximum period, as per Cal. Penal Code § 1370 (2015) (all subsequent statutory references are to the Cal. Penal Code), for the identical alleged crime in the original complaint. The trial court denied the motion.

Mr. Jackson then filed a writ of mandate petition with the Fourth District Court of Appeal. The district court unanimously affirmed the trial court's decision. Further, the court urged the legislature to examine Cal. Penal Code § 1370 and to advise trial courts statewide on the options when faced with an incompetent defendant who has reached the maximum time for restoration.

### Ruling and Reasoning

The California Supreme Court unanimously affirmed the judgment of the district court. In its reasoning, the court first examined the "interaction between § 1387 and 1370" of the California Penal Code (*Jackson*, p 5). The "two-dismissal rule," embodied in § 1387, protects the right to a speedy trial by prohibiting the repeated dismissal and refiling of charges. The court proceeded in its opinion by establishing that Mr. Jackson's felony complaint had been a qualifying dismissal per the two-dismissal rule, citing the associated state senate bill. "Existing law provides for a felony action to be refiled one time . . . . When the case is dismissed, the defendant is re-arrested, re-booked, a new case is filed, and the case processing begins anew" (*Jackson*, p 6, citing Sen. Com. Judiciary (1992)).

Next, the court reviewed Mr. Jackson's contention that his commitment for the maximum period allowed by law blocks further criminal proceedings for the refiled complaint. The court looked at legislative history and determined that the language of § 1387 does not exclude new competency hearings in the context of the renewed case and that the language of § 1370 does not exclude commitment following

the competency hearing if it occurs “during the pendency of an action and prior to judgment” (Cal. Penal Code § 1368).

Moreover, the court said that Mr. Jackson could be recommitted after a new competency evaluation within constitutional principles of due process and equal protection. A defendant who regains competency following the maximum commitment statutory period should be returned to court (Cal. Penal Code § 1372). Similarly, Cal. Penal Code § 1370 provides that a defendant who regains competency during commitment should be returned to court to resume criminal proceedings; a defendant who does not regain competency during this time should be returned to court for consideration of a civil conservatorship and, if not made the subject of this conservatorship, should be released from custody.

Such rules for the proceedings of commitment in the state are the result of the California Supreme Court case, *In re Davis*, 5 P.2d 1018 (Cal. 1973) and the landmark U.S. Supreme Court case, *Jackson v. Indiana*, 406 U.S. 715 (1972). The Court in *Jackson* held that indefinite commitment is contrary to the constitutional principles of equal protection and due process. The Court also held that the duration of commitment may not exceed “the reasonable period of time necessary to determine whether there is a substantial probability that [the defendant] will attain that capacity in the foreseeable future” (*Jackson v. Indiana*, p 738). Accordingly, the duration of Patrick Jackson’s commitment had been “reasonable” and constitutional as per the time limits in California, which had been adopted in *In re Davis* following *Jackson v. Indiana*.

Furthermore, in *Jackson* the Court held that the purpose of commitment is “solely on account of [the defendant’s] incapacity to proceed to trial” (*Jackson v. Indiana*, p 738). Here, the California Supreme Court argued that a defendant who is rearrested on a refiled charge in accordance with Cal. Penal Code § 1387 is not being held for commitment. Instead, the defendant is being held pending admission to bail, which is not contrary to the rights protected by Cal. Penal Code § 1370. However, the court ruled that if the defendant is recommitted following a new competency hearing, then exceeding an aggregate duration of commitment would be contrary to the rights protected by “the rule of reasonableness.” The state concluded that the legislature did not intend Cal. Penal Code § 1370 to “constrain the ‘even-

handed’ application of § 1387” (*Jackson*, p 787, quoting *Crockett v. Superior Court*, 5 P.2d 321, 326 (Cal. 1975)). In this case, Mr. Jackson could be lawfully subject to a new competency examination, but if found incompetent he could not be committed for restoration, given that he had already been committed for the maximum time in relation to the original complaint (*In re Polk*, 84 Cal. Rptr. 2d 389 (Cal. Ct. App. 1999)) and thus remains protected within the established constitutional rights.

Finally, the state supreme court upheld the opinion of the lower court regarding rules for criminal proceedings when a defendant is still incompetent following the maximum commitment time and is not made the subject of a conservatorship:

In the absence of such statutory language, [the] defendant relies on *Jackson* and *Davis* to support his contention that complete release from custody is the only outcome that can pass constitutional muster . . . however, he is trying to capitalize on the language to the effect . . . that he meets the conditions precedent to this rule (*Jackson v. Superior Court*, 202 Cal. Rptr. 3d 247, 249 (Cal. Ct. App. 2016)).

Thus, the California Supreme Court found nothing in the legislative history of Cal. Penal Code § 1370 to support Mr. Jackson’s argument. The court held that a new competency hearing after dismissal of the original complaint and proceeding on a refiled complaint is allowed, pursuant to Cal. Penal Code § 1387, even after an incompetent defendant has reached the maximum period of commitment conferred by § 1370. The authority of § 1387, however, cannot be used in a manner that violates constitutional rights. If a defendant, who had previously been committed for competency restoration, is rearrested on a refiled charge and again is found to be incompetent to stand trial, recommitment cannot exceed the remaining balance from the original commitment. The refiled charges and the ensuing arrest provide sufficient statutory basis for a new competency hearing.

#### Discussion

*Jackson v. Superior Court* weighs the dilemma of the unrestored defendant’s disposition against the due process requirements set forth in *Jackson v. Indiana*. The court concluded that the indefinite detention of an incompetent individual should not be “presumed forever immune” to criminal prosecution for the alleged offense. In other words, a defendant is not exempt from rearrest and a second competency evaluation simply because he had been released fol-

lowing maximum commitment. However, in such a case, if the defendant is again found incompetent, he cannot be recommitted for restoration because he had already been committed for the maximum duration allowed under state law.

## Improper Application of Self-Induced Intoxication

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### Refusal of Medications Not Equivalent to Self-Induced Intoxication

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In *State v. Eager*, 398 P.3d 756 (Haw. 2017), the Supreme Court of Hawai'i found that the lower courts did not properly apply the Hawai'i Revised Statute (Haw. Rev. Stat.) § 702–230 (1993), which defines self-induced intoxication as “intoxication caused by substances which the defendant knowingly introduces into the defendant’s body, the tendency of which to cause intoxication the defendant knows or ought to know.” Samuel Eager was psychotic at the time he assaulted a man and claimed a mental state defense. Because he had stopped taking his psychotropic medications three days earlier, his psychosis was interpreted as self-induced intoxication by the circuit court and later by the intermediate court of appeals (ICA). The Supreme Court of Hawai'i ruled that the lower courts did not conform to the statute and therefore erred in denying Mr. Eager’s defense of lack of penal responsibility based on mental disease.

#### Facts of the Case

On January 29, 2013, Mr. Eager assaulted 79-year-old Hua Zhao Liang at a bus stop. A witness observed the incident and called 911. Mr. Liang was treated for a major skin laceration on his forehead that required stitches, a facial bone fracture, and a serious concussion. Police officers testified that Mr. Eager was “compliant” at the time of his arrest.

Mr. Eager filed a motion for an HRS §704–404 (Supp., 2008) examination for fitness to proceed to trial and penal responsibility. The court assigned a three-member panel of examiners: Dr. Leonard Jacobs, Dr. Duke Wagner, and Dr. Olaf Gitter. Medical records from Queen’s Medical Center and Oahu Community Correctional Center (OCCC) showed that Mr. Eager had been treated at Queen’s January 8 to 10 and 26 to 27, 2013, and that he was seen at OCCC after the assault. He tested positive for marijuana during his January 26 admission. He was prescribed zolpidem, meloxicam, and acetaminophen/oxycodone, but said he did not take them after discharge. He had smoked marijuana prior to the assault.

Dr. Gitter, a psychologist, testified that the records from Queen’s and OCCC showed that Mr. Eager “exhibited signs of mental illness, including an acute manic episode, auditory and visual hallucinations and bipolar disorder” (*Eager*, p 759). He testified that he did not believe that marijuana caused the manic episodes. He opined that Mr. Eager was psychotic at the time of the assault and that the psychosis “substantially impaired” his “cognitive and volitional capacities” (*Eager*, p 759). The finding of psychosis was based on Mr. Eager’s report that he asked Mr. Liang if he believed in Jesus and then assaulted him to get rid of demons.

Dr. Jacobs, a psychiatrist, testified that Mr. Eager’s judgment was impaired due to “a combination of self-induced prescription drug withdrawal and marijuana use” (*Eager*, p 759). He diagnosed him with a “personality disorder and somatic symptom disorder with predominant pain, persistent and severe” (*Eager*, p 759). He testified that discontinuing zolpidem would cause insomnia, agitation, and discomfort, and that stopping acetaminophen/oxycodone could cause severe withdrawal. He opined that Mr. Eager’s psychosis at the time of the assault rendered him incapable of appreciating the wrongfulness of his actions.

Dr. Wagner, a psychologist, testified that Mr. Eager suffered from “posttraumatic stress disorder and cannabis abuse versus dependence” (*Eager*, p 760). Dr. Wagner testified that Mr. Eager said he assaulted Mr. Liang because Mr. Liang told him that he did not believe in Jesus and laughed. Dr. Wagner testified that there was insufficient evidence to conclude that Mr. Eager’s psychosis was severe enough to render him incapable of appreciating the wrongfulness