

Community Forensic Partnerships Division
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www.dsh.ca.gov



DEPARTMENT LETTER: 23-001

July 1, 2023

TO: ALL COUNTY SUPERIOR COURTS
ALL COUNTY DISTRICT ATTORNEYS
ALL COUNTY PUBLIC DEFENDERS
ALL COUNTY BEHAVIORAL HEALTH DIRECTORS
ALL COUNTY COMMUNITY PROGRAM DIRECTORS
ALL COUNTY ADMINISTRATORS' OFFICES
ALL COUNTY EXECUTIVES' OFFICES

SUBJECT: STATUTORY AMENDMENTS PRIORITIZING COMMUNITY
TREATMENT AND DIVERSION FOR FELONY INCOMPETENT TO STAND
TRIAL DEFENDANTS

Purpose:

The purpose of this Departmental Letter (DL) is to inform stakeholders of a recent statutory amendment to CA Penal Code 1370 (SB 1223, Chapter 735, Statutes of 2022) that, effective July 1, 2023, prioritizes and supports outpatient treatment, community treatment, and diversion for felony incompetent to stand trial (IST) defendants. Beginning July 1, 2023, courts shall first consider placement of an IST in an outpatient, community-based treatment, or diversion program, unless the court finds that clinical or safety needs of the defendant, based on a Conditional Release Program (CONREP) Community Program Director's (CPD) recommendation to the court, determine an inpatient setting is necessary. This letter provides information about the impacts of this statutory change on the role of the CPD and the information to be provided in their placement recommendations.

Background:

Over the last decade, the state of California has experienced continued increases in the number of IST defendants committed to DSH for competency restoration services. Despite DSH's efforts to expand its treatment continuum to address the IST waitlist, the number of felony IST defendants referred by the superior courts to DSH for inpatient competency restoration services has continued to increase. In response to this increase, in July 2021, the Legislature enacted Welfare & Institutions Code (WIC) section 4147 through the passage of Assembly Bill 133

(Chapter 143, Statutes of 2021) and the Budget Act of 2021 (Chapter 69, Statutes of 2021), which charged the California Health & Human Services Agency (CalHHS) and DSH to convene an IST Solutions Workgroup comprised of state, local, court, criminal justice, patient advocacy and family member representatives and stakeholders to identify actionable solutions that address the increasing number of individuals with serious mental illness who become justice-involved and deemed IST on felony charges. In November 2021, at the culmination of the IST Solutions Workgroup, the identified strategies and solutions were published in a final report¹. One solution identified by the workgroup to help reverse the cycle of criminalization of individuals with serious behavioral health conditions is to prioritize treatment for IST defendants in outpatient and community treatment settings with appropriate housing and supportive services to help reduce the likelihood the individual will become homeless and re-engaged in the criminal justice system subsequent to their IST commitment.

The 2018 Budget Act authorized DSH to implement a diversion pilot program for individuals who are likely to be found or who have been found IST on felony charges. The Budget Act of 2022 authorized on a permanent basis the diversion program for felony IST individuals while also appropriating over \$535 million to implement additional IST solutions including the development of up to 5,000 beds to provide dedicated housing to support DSH-funded IST diversion and community-based restoration programs. The authorized funding also includes funding to support establishment of a clinical position in each county to serve as a liaison between the CPD, the Court, and local IST programs in recognition of the increased coordination this statutory change will require.

Additionally, corresponding statutory amendments to Penal Code section 1370 were enacted to prioritize placement of IST defendants into community treatment, outpatient treatment, and diversion. These changes are outlined in the table in the below.

Statutory Amendment (Senate Bill 1223, Chapter 735, and Statutes of 2022):

Penal Code section 1370(a)(2)(A) Prior to Statutory Amendment	Penal Code section 1370(a)(2)(A) Commencing July 1, 2023
(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows: (A)(i) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court	(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows: (A)(i) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court

¹ Incompetent to Stand Trial Solutions Workgroup – Report of Recommended Solutions, November 2021, https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf

within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(ii) Commencing on July 1, 2023, a defendant shall first be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if any such program is available, unless a court, based upon the recommendation of the community program director or their designee, finds that either the clinical needs of the defendant or the risk to community safety, warrant placement in a State Department of State Hospitals facility.

Impact:

With this statutory change, and the supporting budgetary investments identified above, DSH anticipates there will be increased outpatient and community treatment placement opportunities through CONREP, community-based restoration (CBR) and diversion programs.

In implementing this statutory change beginning July 1, 2023, the CONREP CPD will provide justification and a clear rationale for placement recommendations to inpatient treatment with DSH. Specifically, the CONREP CPD will author a comprehensive placement evaluation that includes an assessment of risk factors,

current psychiatric functioning, and amenability for outpatient treatment to assist the court in determining whether an individual may be placed in a community treatment option or if the clinical needs or safety risks warrant treatment in an inpatient setting. The CPD will consider all available placement options within the CONREP continuum of care, other appropriate community programs and within DSH when opining on the least restrictive placement setting appropriate to client needs. With regard to diversion treatment, it is important to note that the CONREP CPD will not opine on suitability for diversion, but instead, based on their placement evaluation, identify whether an individual may be a candidate for diversion and will make a recommendation to the court to consider and order an assessment for diversion placement by the diversion program provider.

DSH has been working extensively to develop and expand its continuum of care for individuals determined to be IST on felony charges including community outpatient treatment options within CONREP, diversion, and by expanding the community-based restoration programs. DSH endeavors to reverse the trends of criminalization of individuals with serious behavioral health conditions and continues its efforts to support the goals and implement recommendations of the 2021 IST Solutions Workgroup.

Inquiries related to this DL can be sent to conrep.sac@dsh.ca.gov.

Sincerely,



STACEY CAMACHO
Deputy Director (A)
Community Forensic Partnerships Division