

Clinical Operations and Community Forensic Partnerships Divisions
1215 O Street
Sacramento, California 95814
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DEPARTMENT LETTER: 22-001

January 3, 2023

TO: ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY BEHAVIORAL HEALTH DIRECTORS
ALL COUNTY CHIEF EXECUTIVE OFFICERS
ALL COUNTY COUNSELS
ALL COUNTY DISTRICT ATTORNEYS
ALL COUNTY HEALTH CARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY PUBLIC HEALTH DIRECTORS
ALL COUNTY PUBLIC DEFENDERS
ALL COUNTY SHERIFFS
ALL COUNTY SUPERIOR COURTS

SUBJECT: INFORMATION REGARDING DSH DIVERSION PILOT AND PILOT
CONTRACT EXPANSION PROGRAM
PARTICIPANTS ELIGIBLE FOR PROGRAM FUNDING

EXPIRES: RETAIN UNTIL RESCINDED

SUPERSEDES: DEPARTMENT LETTER 20-001

Purpose

The purpose of this Departmental Letter is to provide counties with guidance regarding diversion program participants that the Department of State Hospitals (DSH) will count towards a county's contracted program population and for whom a county will receive funding in accordance with Penal Code (PC) §1001.36, PC §1370 and Welfare & Institutions Code (WIC) §4361.

Background

The Legislature enacted PC §1001.36 and WIC §4361 and amended PC §1370 on June 27, 2018, to authorize courts to divert certain individuals with serious mental illness and allow DSH to contract with counties as a funding mechanism for the establishment of new or expansion of existing pre-trial mental health diversion programs. PC §1001.36 and PC §1370 establish the criteria by which a court can divert an individual to a county pre-trial Felony Mental Health Diversion Program and WIC §4361 outlines the criteria for clients participating in a county program funded by DSH. DSH has authority to contract with counties on proposals for DSH-funded Diversion programs, and to provide funding as specified in WIC §4361.

Definitions

Felony Mental Health Diversion Clients: Qualified defendants treated in a DSH-funded Diversion program who meet the general or specific eligibility requirements pursuant to PC §1001.36, PC §1370 and WIC §4361.

Instant Offense: The current offense that the defendant is charged with and that led to his/her arrest.

General Eligibility Requirements

DSH-funded Diversion programs are required to create a diversion proposal, obtain approval from DSH, and execute a contract with DSH in order to receive funding. Funding is released in installments based on a county achieving specific population benchmarks outlined within the final contract. DSH will only fund counties for a Felony Mental Health Diversion Client who meets the following requirements:

- A. The instant offense is a felony with the exception of certain statutorily excluded crimes (PC §1001.36(b)(2)(A-H)) (Attachment A).
- B. A guilty plea has not been entered in the case for which DSH-funded Diversion is being recommended.
- C. Restoration of competency services have not previously been provided for the instant offense by another DSH program, including but not limited to a State Hospital, Jail-Based Competency Treatment program, Community-Based Restoration program, or the Admission Evaluation Stabilization Center unless the defendant is arrested on a new felony charge.
 - i. A client may however be served in a DSH contracted facility as described in WIC §4361.6. PC 1370 (a)(1)(B)(iv) which has been amended to allow for these specific placements. A client may also have been treated through the Early Access to Stabilization Services (EASS) as described in WIC § 4361.7 in a county jail prior to being transitioned to DSH-funded Diversion. The primary purpose of these facilities is to serve as a step-down treatment option between jail and DSH-funded Diversion to stabilize defendants prior to community treatment.
 - ii. A client who received restoration services in the past from DSH related to being found IST for a prior felony charge is eligible for diversion if the individual has been charged with a new felony.
- D. Has not previously participated in the DSH-funded Diversion Program for more than thirty (30) days and the county has not previously been funded for the client under the current offense.
 - i. While clients may enter the program as often as the county is willing to admit them, only unduplicated clients entering the program for the first time will be counted towards the county population target and next funding installment.

- E. Has not been found competent, and/or does not have a competency, malingering, or unlikely to be restored recommendation pending before a court.

Specific Requirements for Original Programs Funded Under the FY 2018-19 Pilot Program and New County Programs Funded under the 2021 Budget Act

Programs established and funded under the original FY 2018-19 Pilot Program or new county programs funded through the 2021 Budget Act will be funded for Felony Mental Health Diversion Clients when all the following are true:

- A. Client meets general eligibility requirements as described above.
- B. Client has a primary diagnosis of schizophrenia, schizoaffective disorder, or bipolar disorder (WIC §4361(n)).
- C. Client was evaluated and found IST by the court or is deemed “Likely to be IST.” In order for a client to be diverted as “Likely to be IST” the following must also be true:
 - i. Client displays psychotic or manic symptoms as a result of a diagnosed mental health disorder that prevent the defendant from participating in their legal proceedings and, as a result of these symptoms, doubt has been raised but a competency evaluation has not yet been completed.
- D. A court competency evaluation has not yet been completed but may be in process simultaneously with the diversion evaluation.
 - i. If doubt is raised a second time after a candidate has been restored to competency, that defendant is not eligible.

Specific Requirements for Counties with Amended Contracts to Expand Existing Diversion Pilot Programs Beginning in FY 2021-22

Beginning in July 2021, established DSH-funded Diversion Programs had an opportunity to expand their DSH-funded Diversion contracts. Counties with amended contracts under this 2021-22 expansion program will be funded for clients when all the following are true:

- A. Client meets general eligibility requirements as described above.
- B. Client was evaluated and found IST by the court. WIC 4361(j)(1)(A-B).
- C. Client suffers from a mental disorder excluding antisocial personality disorder, borderline personality disorder, and pedophilia pursuant to PC section 1001.36 subdivision (B)(1)(A).

If you have any questions or require additional information, please contact DSH
Diversion by email at DSHDiversion@dsh.ca.gov.

Original Signed By



Katherine Warburton
Medical Director, Clinical Operations
Department of State Hospitals



Stacey Camacho
Deputy Director (A), Community Forensic
Partnerships Division
Department of State Hospitals

Attachment(s)

ATTACHMENT A: REFERENCES

Listed are the exclusionary crimes from Penal Code 1001.36. (b)(2)(A-H), referenced in Department Letter 22-001, General Eligibility Requirements, (A).

1001.36. (b)(2)(A-H):

(a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the requirements specified in paragraph (1) of subdivision (b).

(2) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(A) Murder or voluntary manslaughter.

(B) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(C) Rape.

(D) Lewd or lascivious act on a child under 14 years of age.

(E) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(F) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(G) Continuous sexual abuse of a child, in violation of Section 288.5.

(H) A violation of subdivision (b) or (c) of Section 11418.