



FINDING OF EMERGENCY

A. Finding of Emergency Regulatory Action Is Necessary

The proposed regulations are being readopted for a second time on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1.

B. Description of Specific Facts Which Constitute the Emergency

NECESSITY OF THE PROPOSED REGULATIONS

Over the past four years, there have been a large increase in Penal Code section 1370 (“Incompetent to Stand Trial” or “IST”) commitments by county courts to DSH for treatment. As the referrals from around the state have increased, the waitlist for patients to be admitted has also grown, despite expansion of capacity by DSH. In response to the growing waitlist, many courts responded by issuing standing orders with a set admission period or by issuing Orders to Show Cause (OSC). The standing orders and OSCs resulted in inconsistent admission periods among counties, consumption of valuable court time, increased threat of the State being found in contempt, and longer wait times for admission to DSH during which defendants remain in county jails without treatment.

In practice, issuance of standing orders or OSCs slow down the admissions process for IST defendants statewide for logistic and administrative reasons. Logistically, a standing order or OSC forces DSH to admit a patient ahead of earlier referrals to avoid legal penalties, causing other referrals to wait longer for admission and disrupting the flow of the waitlist, creating longer wait times overall. Administratively, a standing order or OSC takes away staff time from focusing on: (1) coordinating with counties to receive commitment referral packets; (2) reviewing received commitment packets; and (3) coordinating with counties to transport IST defendants for admission to the hospital. To comply, admission staff must redirect work on one IST defendant to the IST defendant who is the subject of a standing order or OSC.

On April 12, 2016, the Court of Appeal for the First Appellate District upheld the Contra Costa County Superior Court’s standing order to admit patients to DSH within 60 days of commitment. (*In re Loveton* (2016) 244 Cal.App.4th 1025.) This decision provided the first clear guidance on a reasonable admissions timeframe. If courts throughout the state follow the precedent set forth in *In re Loveton* and cease issuing standing orders and OSCs not in line with the decision, DSH anticipates that the problems described above would be ameliorated and that admission wait times would decrease.

However, DSH has not seen courts statewide adhere to *Loveton*. Courts continue to issue OSCs not in line with *In re Loveton*. Therefore, it is necessary to promulgate the proposed regulations to outline DSH’s admissions process for IST defendants and to show that standing orders and OSCs will no longer expedite admission of one county’s IST defendant over another county’s IST defendant.

In re Loveton also discussed the need for courts to provide complete commitment referral packets to DSH. Prior to *In re Loveton*, DSH received many incomplete commitment packets from various counties, and incomplete packets contribute to some delays in the admission of

IST defendants. To provide clear guidance on what a complete commitment packet is, DSH spent a number of months speaking to hospital forensic experts, medical directors, executive management, and the Health and Human Services Agency that oversees DSH, to draft clear, comprehensive regulations.

DSH proposes the emergency regulations to create a statewide, uniform admissions process for IST defendants committed to DSH. The proposed emergency regulations will also ensure that a complete commitment packet is provided to DSH. Implementation of this uniform process through these regulations will preserve the public peace, health and safety, or general welfare by streamlining the admissions process for IST defendants, resulting in expedient access to treatment, removal from the county jail where space is critical and treatment is not always available, decreased use of criminal court time, and equity for IST defendants awaiting admission throughout the state.

DSH duplicates Penal Code section 1370, subdivision (a)(3) in section 1370, subdivision (a)(3), in section 4711 pursuant to the California Code of Regulations, title 1, section 12, subdivision (b)(1), in order to provide clarity and meet the clarity standard. Duplication is necessary because the Penal Code section 1370 commitment packet documents listed in this section are clearly defined except for "medical records" under Penal Code section 1370, subdivision (a)(3)(I). Setting out a regulation only defining medical records could indicate this is the only documentation necessary for a complete Penal Code section 1370 commitment packet when the 1370 statute lists nine individual categories of documents that make-up a complete Penal Code section 1370 commitment packet.

BENEFITS OF THE PROPOSED EMERGENCY REGULATIONS

The benefits of the regulations will be to prevent discrimination, to promote fairness and social equity, and to increase openness and transparency in government. By implementing the *In re Loveton* decision, the proposed emergency regulations will provide a uniform admissions criteria and help all the counties understand the admission process and allow uniformity within the various counties. The proposed emergency regulations will help DSH better serve those IST defendants committed to DSH and provide clarification as to what documents are needed and what will be reviewed. These regulations should reduce overall wait time for admission to DSH, help remove IST defendants from county jails, reduce time on criminal court calendars, and provide equity in admission process to defendants throughout the state. The regulations specify the documentation and records required by the Department to evaluate each committed individual for admission to a state hospital. Further, the regulations lay out the factors that the Department considers in assessing each committed individual for medical needs, psychiatric acuity, and security risk. Clearly laying out the objective metric that the Department will use in admitting committed individuals safeguards from the preferential treatment of one county over another or one committed individual over another, thereby preventing discrimination and promoting fairness. With a regulated standard, state-wide admissions process, the expectations of courts, counties, counsel, and committed individuals about the admissions process will be better managed and met, fostering openness and transparency in government.

EFFECT OF THE PROPOSED EMERGENCY REGULATIONS

- (1) DSH has done a search of existing statutes and regulations. These proposed regulations are consistent with existing statutes and regulations and will implement and comply with *In re Loveton*.
- (2) There are no federal regulations previously adopted or amended that prohibit the proposed regulations.

- (3) These regulations will provide uniform rules to all counties and will provide clarification in the admission process for all counties and IST defendants committed to DSH pursuant to Penal Code section 1370.

THE FINDING OF EMERGENCY

DSH finds that the proposed regulatory action is necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” (Gov. Code, § 11342.545.)

DSH currently is attempting to simultaneously and timely admit patients from all 58 counties, while IST referrals from many of these counties have been increasing substantially each week. The second readoption of the proposed emergency regulations will continue to ensure conformity with the process set forth in *In re Loveton*. While DSH is also working on system-wide bed expansion, DSH has been sued by the ACLU in Alameda Superior Court as well as being sued in a potential class action lawsuit in federal court from Ventura County patients, both lawsuits challenging the admissions timeline, standards, and process for IST defendants. Further, when a patient has not been admitted to DSH after a period of time, some courts have released the patient into the community.

Readoption of the proposed emergency regulations is the immediate action required to avoid serious harm to the public peace, health, safety, or general welfare. Should the proposed emergency regulations not be readopted, there would be serious harm to the counties, the courts, the IST defendants, and the public. Counties, court, and counsel would be without clear and standard guidance on the admissions process for IST defendants. Some IST defendants, after waiting a period of time, may be released by the courts to the community. As a result, there may also be an increase in courts issuing standing orders or OSCs not in line with *In re Loveton*, further diverting State time and resources from a standardized admissions process to addressing standing orders or OSCs and further increasing wait times for IST defendants.

C. Summary of Proposed Regulations

ADOPT SECTION 4700

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4700 to provide definitions of terminology that is used by current statutes and by the proposed regulations.

ADOPT SECTION 4710

This regulatory action would add Title 9, Division 1, Chapter, 16, Article 7, Section 4710 to provide the factors which may affect the actual date of admission of an IST patient to DSH.

ADOPT SECTION 4711

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4711 to clarify the specific documents to be included in a complete commitment packet which are required for the admission of an IST patient to DSH.

ADOPT SECTION 4712

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4712 to clarify which medical documentation and information is required for the admission of an IST patient to DSH.

ADOPT SECTION 4713

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4713 to clarify how an IST defendant's medical needs may affect to which state hospital he or she is admitted.

ADOPT SECTION 4714

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4714 to clarify how DSH will evaluate an IST defendant's security risk.

ADOPT SECTION 4715

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4715 to clarify how an IST defendant's security risk may affect to which state hospital he or she is admitted.

ADOPT SECTION 4716

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4716 to provide that DSH will admit an IST defendant with a complete commitment packet and how DSH retains discretion as to the admission of an IST defendant with an incomplete packet.

ADOPT SECTION 4717

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4717 to provide that DSH may admit an IST defendant notwithstanding the date the court committed him or her if DSH determines that the IST defendant suffers from psychiatric acuity.

D. Technical, Theoretical, and Empirical Study or Report

None.