



DEPARTMENT LETTER: 21-001

**November 3, 2021**

TO:

ALL COUNTY BEHAVIORAL HEALTH DIRECTORS  
ALL COUNTY DISTRICT ATTORNEYS  
ALL COUNTY PUBLIC DEFENDERS  
ALL COUNTY SUPERIOR COURTS  
ALL COUNTY DIVERSION TREATMENT PROVIDERS

SUBJECT: INFORMATION REGARDING DIVERSION OF ELIGIBLE FELONY  
ISTS PENDING PLACEMENT TO DSH

EXPIRES: RETAIN UNTIL RESCINDED

### **Purpose**

The purpose of this Departmental Letter is to provide counties with guidance regarding the assessment and diversion of eligible felony defendants found Incompetent to Stand Trial (IST) who have been committed to DSH by the court but are pending placement to a DSH facility. This direction is intended for counties who have contracted with the Department to receive funding for a felony mental health diversion program in accordance with Penal Code (PC) §1001.36, PC §1370 and Welfare & Institutions Code section 4361 (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 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 §§ 1370 and 1001.36 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 to operate diversion programs, and to provide funding as specified in WIC §4361.

WIC §4361 authorizes individuals who have already been found IST on a felony charge by the courts to be served in DSH funded county felony diversion programs. Individuals who have been found IST by the courts, and who may be eligible for a

county felony diversion program, may already be committed to DSH and pending placement to a DSH facility or Jail-Based Competency Treatment (JBCT) program. Per California Code of Regulations, Title 9, Division 1, Chapter 16, Article 7, § 4710, IST admissions to DSH facilities are based primarily on the date of commitment by the court. Other factors that affect the date of admission of an IST pending placement are the availability of beds at the facility considered for placement, psychiatric acuity or medical needs that necessitate admission to a specific facility, and the ability of the committing county to transport the IST to a specific facility within a reasonable timeframe.

Removing an IST from the DSH pending placement list to admit the individual to a county felony mental health diversion program does not remove their original IST commitment date for the purposes of admission pursuant to § 4710. If an IST defendant is unsuccessful in that program and the court determines commitment to DSH is necessary, that individual will be added back to the pending placement list in accordance with their original commitment date. The processes outlined in this letter should be used by any county felony diversion program diverting an IST defendant who has been ordered to DSH and pending placement to ensure that the defendant retains their original IST commitment date to the department. These processes will also ensure that an IST being considered for a county diversion program is not transported to a DSH facility as defined under Welfare and Institutions Code section 4100 prior to the conclusion of the diversion assessment and decision by the court. This policy does not apply to individuals who are arrested and found IST on a new crime while participating in a diversion program.

## **Procedure**

### **A. Diversion Assessment No-Transport Requests**

If your county identifies an IST currently pending placement to DSH who the county would like to assess for its Felony Mental Health Diversion program:

1. Email the DSH Patient Management Unit (PMU) at [courtreferrals@dsh.ca.gov](mailto:courtreferrals@dsh.ca.gov) and request a patient transport hold.
2. Include the following information in the email to ensure the correct defendant is identified:
  - i. Defendant name
  - ii. Defendant date of birth
  - iii. Criminal Identification and Information (CII) Number
  - iv. Current case number
3. PMU will place a transport hold in the defendant's file to notify all DSH facilities, as defined under Welfare and Institutions Code section 4100, not to transfer.

4. If the defendant is not accepted into the Diversion program, notify PMU at [courtreferrals@dsh.ca.gov](mailto:courtreferrals@dsh.ca.gov). The transport hold on the defendant will be removed.
5. If the defendant is accepted into the Diversion program, follow the steps outlined in Section B “Admission to Diversion from Pending Placement List.”

### **B. Admission to Diversion from Pending Placement List**

If your county court orders an IST on the DSH pending placement list into the county Felony Mental Health Diversion Program:

1. Submit to PMU the minute order from the court authorizing diversion in the designated county Workspace folder. Clearly identify the uploaded document as the minute order for diversion placement. PMU will cancel scheduling the defendant for admission to DSH in the Patient Reservation Tracking System (PaRTS) and will notate the cancellation is for diversion. Once admission scheduling is canceled in PaRTS the defendant will no longer be on the pending placement list.

### **C. Return to Pending Placement List if Revoked from Diversion**

1. If a defendant is unsuccessful in Diversion and will be referred back to the pending placement list, the committing court must upload the new Minute Order to the appropriate Workspaces folder. The Minute Order should note that the defendant is a Felony Mental Health Diversion participant whose participation in the program has been revoked.
2. PMU will create a new scheduling order in PaRTS with the defendant’s original commitment date. Please note that this only applies to defendants who have not been arrested and found IST on a new charge. If they have been found IST on new charges, the commitment date will reflect the date of the new commitment order to DSH.

If you have any questions or require additional information, please contact DSH  
Diversion by email at [DSHDiversion@dsh.ca.gov](mailto:DSHDiversion@dsh.ca.gov).

Original Signed By



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