

**Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)**

FACT SHEET

Issue Title: Incompetent to Stand Trial Early Stabilization & Community Care
Coordination: *Early Access to Treatment and Medication Stabilization*

The purpose of this TBL is to provide early access to medication stabilization for defendants found incompetent to stand trial (IST), by clarifying the expectations of a court appointed psychiatrist or psychologist in informing the court whether an individual may need psychiatric medications to stabilize their mental health conditions in order to be restored to competency. This TBL removes barriers to providing necessary medications for individuals found IST by clarifying that jails may provide involuntary medications to ISTs who are pending transfer to a treatment program and permits the medication orders to transfer with the patient between treatment settings and other placements.

Background and History:

Currently, Penal Code section 1369 is ambiguous as to the expectations of a court appointed psychologists and psychiatrists in assessing and informing the court on involuntary medication needs of individuals being evaluated for competency. Such ambiguity allows psychologists, who conduct the majority of these competency evaluations, to avoid essential questions related to capacity to consent to medications, whether the individual is diagnosed with a psychotic disorder that may benefit from medication treatment, and whether an individual is a danger to others. These questions are well within the scope of a psychologist's practice and are essential considerations for the court. This ambiguity creates uncertainty with courts on the ability to utilize psychologist's evaluation as a basis of information on which to issue an involuntary medication order. When medication questions are not addressed in evaluations, the court cannot consider these important issues and initiate involuntary medication orders, when needed.

Criteria specifically related to involuntary medication for the purpose of restoring a defendant to trial competency for serious criminal charges include specific questions that are best addressed by a prescribing practitioner. These questions are those outlined in the United States Supreme Court Decision *United States v. Sell* United States Supreme Court 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003) and codified in Penal Code section 1370, subdivision (a)(2)(B)(i)(III). The current statute combines these Sell Criteria with questions related to capacity and danger, which is confusing in the context of the evaluation by a psychiatrist compared to a psychologist.

Currently, Penal Code section 1369.1 allows a jail to be designated as a treatment facility in order to provide medications involuntarily if approved by the local county

board of supervisors. Since the time 1369.1 was enacted, Penal Code section 2603 took effect to allow involuntary treatment of individuals in local jails. The combination of the two like statutes created this ambiguity on which process to follow when seeking involuntary treatment. Repealing Penal Code section 1369.1 eliminates this ambiguity.

Currently, Penal Code section 1370 does not permit the committing court to issue an involuntary medication order to include the jail while a defendant awaits admission to a DSH facility, or other treatment facility.

Currently, Penal Code section 2603 does not allow any order for involuntary medication obtained by the Sheriff to transfer with the defendant when they are admitted by DSH or any other treatment provider. DSH or the treatment provider must petition for an involuntary medication order after the individual is admitted, if there is no such order issued by the court at commitment pursuant to Penal Code section 1370.

Justification for the Change:

The changes will clarify expectations for evaluators and ensure they address medication relevant questions to the extent possible. This will provide courts more clinical evaluations to consider medication orders which are essential treatment tools. The changes will also allow critical treatment to begin immediately upon commitment by the courts if involuntary treatment is also ordered by the court.

DSH has found that essential treatment can be delayed when an involuntary medication order is not considered and executed. In one study examining records of IST patients on the waitlist, it found that almost 60% of those without an involuntary medication order, or about 17% of patients admitted, could have benefitted from one given their lack of compliance with medications in the jail setting. This is because they did not comply with needed medication treatment while awaiting transfer from the local jail to a DSH facility. This could have translated to over 319 patients (defendants) in 2021 for DSH hospital admissions alone.

Delayed treatment can lead to harm and prolong adverse consequences to an individual's physical or mental health, increase the risk of dangerous behavior towards others, prolong the time needed for restoration and prevent an individual from being able to be treated in a least restrictive treatment environment or being considered for a diversion program. When needed medication is administered quickly during acute illness, recovery can be expedited. Medication orders benefit the patient by reducing the need for intensive and restrictive treatment and facilitating return to court and a speedy trial or placement in a diversion or community-based competency restoration program. In some cases, commencing treatment prior to admission to a DSH facility may restore an individual's competence to stand trial before a transfer to the DSH facility would be required.

This TBL would amend Penal Code Sections 13691.1, 1370 and 2603 as summarized below:

- Clarify expectations for psychologist and psychiatrist evaluators permit medication orders related to lack of capacity and for dangerousness, if deemed appropriate by a prescriber.
- The change to eliminate Penal Code section 1369.1 clarifies that jails can seek involuntary medication orders pursuant to Penal Code section 2603. This streamlines the process, removes ambiguity, and clarifies which process to use to seek an involuntary medication order for medically appropriate treatment.
- The change to Penal Code section 1370 will permit the committing court to issue an involuntary medication order to include the jail while a defendant awaits admission to a DSH facility, or other treatment facility. This will provide an avenue for early treatment while the defendant awaits transfer to DSH.
- Changes to Penal Code section 2603 allow any order for involuntary treatment of an individual housed in the jail obtained by the Sheriff to transfer over to DSH after admission. This permits continuity of care across setting and reduces the potential for decompensation due to lack of a valid order.

Summary of Arguments in Support:

Appropriate care for defendants can be delayed due to a lack of clear authority and process regarding involuntary medication orders. Patients in the acute stages of an illness often do not recognize they need medication, and they lack capacity to make decisions regarding medications. They also can present a danger to themselves or others and require medication for those reasons. The language regarding scope of practice for medication consideration is confusing. Increased clarity is likely to improve the necessary consideration of these factors. Currently, medication orders cannot transfer across settings, resulting in needless disruption in care. The proposed changes will facilitate access to medication and continuity of care by the following means:

- Ensure medication relevant questions are considered during IST evaluations by clarifying expectations and clarifying the role for psychologist evaluators.
- Encourage court consideration of medication orders to promote early access to treatment for patients in acute stages of illness, potentially reducing restoration time and potential harm.
- Clarify that specific medication related questions are best addressed by prescribing practitioners. These changes permit medically necessary treatment to be initiated and allows an individual to receive that treatment at any point while in custody. This includes during competency proceedings and while awaiting admission to a treatment program or facility.
- Ensure continuity of care by permitting transfer of medication orders.