

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

FACT SHEET

Issue Title: Expand Diversion and Community Based Restoration Capacity

The purpose of this TBL is to address the growing number of individuals being found incompetent to stand trial (IST) on felony charges and awaiting placement to a Department of State Hospitals (DSH) facility for competency restoration and to encourage placement of individuals in least restrictive options (community-based restoration programs and diversion) when clinically appropriate, safe to do so, and programs are available. Specifically, this TBL amends the current placement presumption of an inpatient treatment setting for individuals determined to be IST to instead presume that persons deemed IST should be placed in an outpatient or community treatment setting unless otherwise indicated. Additionally, this language clarifies that only individuals who have been found IST are eligible for placement in DSH funded IST diversion program and removes eligibility for individuals who are likely to be found IST. This TBL also clarifies diversion data that counties operating DSH funded IST diversion programs must submit to DSH.

Background and History:

Over the last decade, the State of California has seen significant year-over-year growth in the number of individuals charged with a felony offense who are IST committed to DSH for competency restoration services. The State of California has responded to the substantial growth in the felony IST population through multiple investments to increase DSH's capacity to serve these individuals with serious mental illness. However, the growth in referrals of felony IST patients has exceeded DSH's capacity and outpaced other efforts made in response to this growth, resulting in an increasing waitlist and wait times to admission.

In many cases, an insufficient continuum of community-based specialty mental health services has led to an increase of under or untreated individuals with serious mental health conditions who end up cycling in and out of homelessness and the justice system. When individuals are stabilized and supported by appropriate treatment and services in the community, they are less likely to become homeless and justice involved.

The 2022-23 budget proposes a sizable investment in expanding community-based treatment and diversion options for individuals with serious mental illnesses who have been found IST on felony charges. With this investment, approximately 5,000 beds will be made available in community-based treatment and diversion programs.

Currently, Penal Code 1370 prioritizes placement for ISTs in inpatient settings and does not require individuals to be considered for community-based treatment programs.

Justification for the Change:

This TBL is necessary to ensure that individuals found IST are placed in the least-restrictive setting and that the investments made for this population are correctly utilized by county partners for treatment of the felony IST population. DSH estimates that 60-70% of felony IST patients do not require the level-of-care provided in a state hospital or jail-based treatment bed; the changes proposed in this TBL package will establish that the least-restrictive setting is always considered for each defendant. This TBL also clarifies data collection requirements to assure county partners that the data elements they are required to submit to DSH are clearly articulated in statute and allowed under the law.

This TBL would amend the applicable Welfare and Institutions Code (WIC) Section 4361 and Penal Code (PC) Section 1370 as follows:

- Beginning July 1, 2023, defendants shall first be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if one exists and is available, unless a court determines treatment at a state hospital is required.
- Amend the eligibility criteria for state-funded diversion programs so that individuals who have the potential to be found incompetent to stand trial on felony charges are no longer eligible for the program.
- Amend clinical language to reflect an updated list of mental disorders that participants may be diagnosed with when being found incompetent to stand trial per the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.
- Require programs to provide additional identifying information for each individual participating in programs, whether they complete diversion or not.
- Remove the requirement for participating counties to match a percentage of funding towards the total cost of diversion and administrative costs associated with development and evaluation activities.
- If the defendant is committed directly to a county program in lieu of commitment to the Department, the counties shall provide the minute order from the court documenting the IST finding on a felony charge and the original evaluation associated with the IST finding.
- Allow all county contracts that were executed prior to these proposed statutory changes to continue with all of the original parameters of the program, until those contracts expire.

Summary of Arguments in Support:

DSH estimates that 60-70% of IST commitments are eligible for services each year in a community-based program. Currently, the majority of these individuals are committed to DSH for treatment in a state hospital or jail-based competency treatment program without any consideration of whether they may be eligible for a diversion program. The 2022-23 budget proposes sizeable investments to expand community-based treatment and diversion options for ISTs. This TBL is necessary to ensure that individuals deemed IST are first considered for treatment in their least restrictive setting before being admitted to a state hospital or jail-based competency treatment program for a total of approximately 3,000 felony ISTs based on the current monthly average referral rate of 455 ISTs. This TBL would:

- Increase the number of IST defendants ordered into outpatient and other community treatment programs by the Courts.
- Increase the number of IST patients treated in the least-restrictive setting appropriate to their clinical needs and violence risk.
- Increase diversion opportunities and community-based treatment options for ISTs.
- Prioritize state hospital beds for IST patients in need of the highest levels of care.