

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

FACT SHEET

Issue Title: Felony IST Growth Cap

The purpose of this TBL is to implement a growth cap on Incompetent to Stand Trial (IST) referrals that will include a county penalty payment methodology if the growth cap is exceeded.

Background and History:

Criminal defendants who are unable to understand criminal proceedings or assist counsel in their defense are determined by a court to be IST. If these individuals are charged with a felony, they can be committed to the Department of State Hospitals (DSH) to provide treatment services with the goal of restoring their competency and enabling them to return to court to resume their criminal proceedings.

Beginning in fiscal year (FY) 2012-13, DSH began to experience an increase in the number of IST defendants committed and referred to the department which, over the subsequent years, has continued to grow and outpace the number of new beds, programs and process efficiencies implemented by DSH in response to this growing population. As of January 2022, the number of IST defendants pending placement to a DSH treatment program was over 1700. While the high number of individuals pending placement can be partially attributed to protective measures implemented by DSH in response to COVID-19, the ISTs pending placement to a DSH program prior to COVID-19 was over 800.

The growing number of county IST commitments is largely driven by insufficient appropriate community treatment services which leads to the increased involvement in the justice system of under or untreated individuals with serious mental illness. To ensure that the expansion of DSH funded community-based care does not create unintended incentives that drive additional IST commitments, the state will implement a growth cap that will include a penalty payment if the growth cap is exceeded.

Justification for the Change:

This TBL would address the growing number of felony IST commitments by adding Welfare and Institutions Code section 4336 to establish a growth cap on the number of IST determinations and a penalty payment methodology. DSH proposes to establish a baseline to set each county's cap at the total number of felony IST determinations that are made in the current fiscal year (FY 2021-22). If counties exceed their baseline number, they will be charged a penalty payment for the total number of individuals determined IST on felony charges above their established baseline. The methodology will use a scaled approach based on the number of IST determinations that exceed the baseline by a given county. The total penalty payment will be based on DSH's published per individual rate for state hospital treatment. The growth cap and resulting penalty payment methodology will apply to all counties, regardless of whether they contract with

the department for community-based programming. Payments will be calculated a year in arrears, based on the prior year's actual number of IST determinations.

The proposed language provides counties flexibility in determining which local funding source they may use to make penalty payments, including the option to pay from funds they have received from DSH for serving individuals determined to be IST. Payments will be held in a new Mental Health Diversion Fund and the department will allocate those funds to counties to support additional county infrastructure and programming to reduce felony IST determinations including, but not limited to, pre-booking and pre-arrest diversion programs, as well as re-entry services and supports for ISTs who have been restored to competency and are released from jail back into the county. Counties that receive this funding will be required to submit an annual report to DSH identifying the use of these funds in the prior fiscal year.

Summary of Arguments in Support:

Referral rates from the most recent decade suggest that counties will continue to increase referrals of ISTs to DSH. This proposal will incentivize local community solutions for those with serious mental illness that have been found incompetent to stand trial, as well as the growth of programs providing local care which can prevent the felony arrest of individuals with serious mental illness. To reduce the cycle of criminalization of serious mental illness, community-based treatment must be more available.