



# CALIFORNIA DEPARTMENT OF State Hospitals

## NOTICE OF PROPOSED RULEMAKING

### TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 1. DEPARTMENT OF MENTAL HEALTH

January 13, 2017

The Department of State Hospitals (DSH) encourages adoption of the proposed regulations below after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

A public hearing will be held if any interested person, or his or her duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted by facsimile (FAX) at (916) 651-3090 or by e-mail to [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov). The written comment period closes at 5:00 p.m. on February 27, 2017. The Department will consider only comments received at the Department office by that time. Submit comments to:

Regulations Unit  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814

#### AUTHORITY AND REFERENCES

Authority: Sections 4005.1, 4027, 4101, and 7225, Welfare and Institutions Code.

References: Sections 1370 and 1370.01, Penal Code; Sections 7228 and 7230, Penal Code; Code of Federal Regulations, title 45, section 164.508, and *In re Loveton*, (2016) 244 Cal.App.4th 1025.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DSH proposes to adopt regulations to ensure DSH is in compliance with the law. These regulations are being implemented for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1.

### Policy Statement Overview

The objective of the proposed action is to implement, interpret, or make specific state policy regarding Penal Code section 1370, as set forth in the *In re Loveton* decision. The regulation would clarify what specific documents need to be provided to DSH for admission to a DSH hospital, as well as providing direction on how and when a patient will be admitted. The regulation will provide for a uniform admissions procedure statewide, where counties and Incompetent to Stand Trial (IST) individuals will be treated uniformly and equally.

### Existing Law

Currently, the patients are committed to DSH by the courts and are involuntarily held at the respective county facility. These patients are committed to DSH due to a mental illness. DSH is responsible for providing the care and treatment, and the safety and security of these patients. Penal Code, section 1370, subdivision (a)(3), currently provides as to what documents are needed for a commitment packet in order to be admitted to a DSH hospital. However, the law does not provide or account for how to prioritize admissions of patients from the various committing counties simultaneously. This has led some courts to issue Orders to Show Cause (OSCs), or increase usage of OSCs, in an attempt to have patients admitted to DSH earlier than patients from committing counties that do not utilize this strategy.

### Anticipated Benefits of the Proposed Regulation

These proposed regulations are intended to clarify Penal Code section 1370, and allow DSH to set forth a uniform policy of the admission. The anticipated benefits of the proposed regulation will be uniform admissions procedures statewide that will help DSH better serve IST defendants committed to DSH, ensure individuals will be treated uniformly and fairly, and provide guidance to counties on the necessary documents needed to process the IST defendants' admission.

### Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department evaluated whether there were any other regulations concerning the uniform admission of IST individuals and has found that these are the only regulations on this area. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

## Material Incorporated by Reference

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5, Published May 18, 2013.

## DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The Department of State Hospitals has made the following initial determinations:

- Substantial Difference from Existing Comparable Federal Regulations or Statute: None.
- Mandates on Local Agencies or School Districts: None. County courts are State funded, and the courts are statutorily required to provide the commitment packet pursuant to Penal Code section 1370.
- Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: DSH anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.
- Non-discretionary Costs or Savings Imposed on Local Agencies: DSH anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.
- Costs or Savings to Any State Agency: DSH anticipates that there may be some additional state legal costs, as DSH may be ordered to appear in court more frequently, until all the courts become comfortable with the new proposed regulation and the new timeline that the regulations will create in admissions for all the Penal Code section 1370 patients throughout the state.
- Costs or Savings in Federal Funding to the State: None.
- Costs or Savings to Individuals or Businesses: DSH is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed action.
- Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: None.
- Housing Costs: None.
- Effect on Small Business: The proposed regulations will not affect small business because the proposed regulations provide uniform admission criteria for

IST individuals to DSH and documentation counties provide to DSH as part of this admission process.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

### Creation or Elimination of Jobs within the State of California

The proposed regulations would not create or eliminate jobs within the State of California.

### Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed regulations would not create new businesses or eliminate existing businesses.

### Expansion of Businesses Currently Doing Business within the State of California

DSH does not anticipate that there was be any expansion of businesses currently doing business within the State of California.

### Anticipated Benefits of the Regulation

By implementing the *In re Loveton* appellate decision, the proposed 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 regulation 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.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DSH must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, would be is as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment a during the written comment period.

## CONTACT PERSONS

Inquiries concerning the proposed regulation may be directed to:

Dennalee Folks  
Department of State Hospitals  
Regulations Unit  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Telephone: (916) 651-8544  
e-mail: [Dennalee.Folks@dsh.ca.gov](mailto:Dennalee.Folks@dsh.ca.gov)

The back-up contact person for these inquiries is:

Shazida Chechi  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Regulations' Telephone: (916) 651-3222  
E-mail: [shazida.chechi@dsh.ca.gov](mailto:shazida.chechi@dsh.ca.gov)

Please direct requests to Ms. Folks at the above address for copies of the proposed text (the "expressed terms") of the regulation, the initial statement of reasons, the text of the regulation or any other information upon which the rulemaking is based.

### AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATION AMENDMENT, AND THE RULEMAKING FILE

DSH will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Ms. Folks.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DSH may adopt the proposed regulation substantially as described in this notice. If DSH makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DSH adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Folks at the address indicated above. DSH will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Folks at the above address.

### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation can be accessed through our website at [www.dsh.ca.gov/About Us/regulations.aspx](http://www.dsh.ca.gov/About_Us/regulations.aspx).

DEPARTMENT OF STATE HOSPITALS  
INITIAL STATEMENT OF REASONS

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospital Operations  
Article 7. Admissions

The Department of State Hospitals (Department) proposes to adopt Article 7, Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716, and 4717.

**PROBLEM STATEMENT.**

Penal Code section 1370 mandates that the Department of State Hospitals (Department or DSH) admit, treat, and restore to competency individuals found by courts to be Incompetent to Stand Trial. When a court makes a finding that a criminal defendant is incompetent to participate or assist in his or her own defense, it commits that individual to the Department as Incompetent to Stand Trial (committed individual). The law tasks the Department to admit the committed individual to a state hospital for treatment and competency restoration.

An individual judicially committed to the Department as Incompetent to Stand Trial may be admitted to and treated at one of the following state hospitals: Department of State Hospitals – Atascadero, Department of State Hospitals - Patton, Department of State Hospitals - Napa, or Department of State Hospitals - Metropolitan. The number of committed individuals continues to substantially increase, since fiscal year 2010 to 2011. Consequently, each state hospital has reached its maximum licensing, functional, and statutory capability, which has resulted in a patient wait list and a delay in admission. Because of the delay, courts, counties, and the committed individuals have had to wait for current state hospital patients to be discharged and beds become available. Without a regulated, standard admissions process, courts, counties, and committed individuals have had no meaningful way to expect admission that is timely or fair.

Furthermore, in a recent published decision, 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 became final on April 12, 2016. The *In re Loveton* decision has given some courts the impression that in order to ensure that their patients are admitted to a DSH hospital as soon as possible and ahead of Incompetent to Stand Trial referrals from other counties, a standing order, or alternatively beginning or increasing issuance of OSCs will help expedite the admission. In *In re Loveton*, the Court also discussed the need for the superior courts to provide complete commitment packets to DSH. DSH has received numerous incomplete commitment packets from various counties, and these incomplete packets have contributed to some delays in admitting patients for treatment to DSH. A

uniform statewide Incompetent to Stand Trial referral and admission process is needed to comply with the *In re Loveton* decision and help all the counties understand the admission process.

## **ANTICIPATED BENEFITS.**

The regulations will standardize the admissions process of committed individuals state-wide. 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. Moreover, the regulations ensure that each state hospital operates its admissions process in the same way. The Department anticipates that standardizing the admissions process will provide uniformity and predictability to the courts, counties, the committed individuals, and the state hospitals. With a standard, state-wide admissions process, the expectations of courts, counties, counsel, and committed individuals about the admissions process will be better managed and met and, further, the regulations ensure that all committed individuals are treated in the same way.

### **Section 4700: Definitions.**

**Purpose:** To provide definitions for “low or moderate security risk,” “high security risk,” and “psychiatric acuity” to give uniform guidance on these specific factors the Department considers in evaluating a committed individual for admission to a state hospital.

**Necessity:** Defining “low or moderate security risk,” “high security risk,” and “psychiatric acuity” ensures that when the Department communicates with parties about the factors it considers in evaluating a committed individual for admission, it is clear to the courts, counties, and counsel exactly what these uniform factors are.

### **Section 4710: Date of Admission of Individuals Found Incompetent to Stand Trial.**

**Purpose:** To provide a standard admissions procedure for each committed individual based on the date the court committed each person to the Department.

**Necessity:** Instituting a state-wide admissions queue according to the date the court has committed each individual to the Department ensures that all committed individuals are treated in the same way. Penal Code section 1370, subdivision (a)(2), also ensures that the Department has latitude to admit committed individuals to a state hospital notwithstanding the date the court committed the individual to the Department if there is an exigent, psychiatrically acute situation. A standard, state-wide admissions procedure ensures that courts, counties, and counsel can have the expectation that committed individuals are treated fairly.



**Section 4711: Required Documentation for Admission of Individuals Found Incompetent to Stand Trial.**

**Purpose:** To specify the required documentation and records the Department requires to properly evaluate each committed individual for admission and to determine the appropriate state hospital for each committed individual.

**Necessity:** Requiring that the counties submit to the Department documentation and records relating to each committed individual ensures that the Department will have all the information it needs to evaluate each committed individual for admission to the most appropriate state hospital.

**Section 4712: Required Medical Records for Admission of Individuals Found Incompetent to Stand Trial.**

**Purpose:** To specify the required documentation and records the Department requires to properly accommodate and address the medical needs of each committed individual.

**Necessity:** Requiring that the counties submit to the Department documentation and records relating to each committed individual ensures that the Department will have all the information it needs to evaluate each committed individual for admission to the most appropriate state hospital which can meet the medical needs of that committed individual.

**Section 4713: Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Medical Records Review.**

**Purpose:** To provide a standard procedure on reviewing documentation and records that the Department receives for each committed individual.

**Necessity:** Standardizing the medical evaluation process ensures that each committed individual is afforded the assessment of medical and psychiatric professionals and that through this standard process, each committed individual is admitted to the most appropriate state hospital according to his or her medical needs.

**Section 4714: Security Risk Assessment of individuals Found incompetent to Stand Trial.**

**Purpose:** To specify a standard list of security risk factors that the Department considers in determining whether a committed individual is a low, moderate, or high security risk.

**Necessity:** Standardizing the security risk evaluation process ensures patient safety, hospital staff safety, and public safety. The security risk assessment allows the Department to place each committed individual in the most appropriate state hospital according to his or her risk level. This ensures that each committed individual is admitted to a particular state hospital that is prepared to house him or her, with consideration of the other patients and the staff in the particular state hospital and also that of the community surrounding the particular state hospital.

**Section 4715: Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Security Risk Assessment.**

**Purpose:** To identify to which state hospital each committed individual shall be admitted based on the Department's security risk assessment.

**Necessity:** Identifying which state hospitals may house and treat a committed individual with low and moderate security risk and a committed individual with high security risk ensures that courts, counties, committed individuals and their families, and the public can have a degree of expectation as to which hospitals a committed individual may be admitted, depending on his or her security risk level, and that each committed individual is placed in a state hospital suitable to meet the security needs of that individual.

**Section 4716: Placement of Individuals Found Incompetent to Stand Trial Upon Review of Completed Commitment Packet.**

**Purpose:** To require that the Department receive and review each committed individual's documentation and records before that individual may be admitted to a state hospital. To reserve the Department's authority to admit a psychiatrically acute committed individual notwithstanding the date the court committed that individual to the Department. To reserve the Department's final authority for placement of a committed individual in a particular state hospital.

**Necessity:** Requiring that courts and counties furnish a complete commitment packet to the Department before it admits a committed individual ensures that the Department has all the information it needs to appropriately place a committed individual in the most suitable state hospital, one that meets the psychiatric, medical, and security needs of that individual. Reserving the Department's authority to admit a committed individual notwithstanding an incomplete packet in cases of psychiatric acuity ensures that a committed individual who is experiencing exigent psychiatric issues is accommodated and treated timely.

**Section 4717: Psychiatric Acuity Review of Individuals Found Incompetent to Stand Trial.**

**Purpose:** To provide a standard procedure for receiving documentation and records so the Department can evaluate a committed individual for psychiatric acuity. To give authority to the Department to determine whether a psychiatrically acute committed individual shall be admitted to a state hospital notwithstanding the date the court committed that individual to the Department.

**Necessity:** Identifying a standard procedure for evaluating a committed individual for psychiatric acuity and, further, for admission notwithstanding the date the court committed the individual to the Department ensures that exigent psychiatric issues are accommodated and treated timely.

**TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

The Department has not identified or relied upon any technical, theoretical or empirical studies, reports, or documents related to these regulations.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS.**

The Department does not anticipate that these proposed regulations will have any impact: (1) in creating or eliminating jobs within the State of California, (2) in creating or eliminating businesses in the State of California, or (3) on the expansion of businesses in the State of California.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

The Department believes that there are no reasonable alternatives to the proposed regulations which would be more effective and less burdensome to affected private persons or equally effective in implementing the provision of law.

**DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES.**

No duplication or conflict with federal regulations is expected to occur.

## **INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS**

### **TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES**

#### **DIVISION 1. DEPARTMENT OF MENTAL HEALTH**

#### **CHAPTER 16. STATE HOSPITAL OPERATIONS**

### **Adopt ARTICLE 7. ADMISSIONS**

### **Adopt Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716 and 4717**

#### **4700. Definitions.**

- (a) "Low or moderate security risk" means that the individual, based on the assessment by the Department of State Hospitals of the factors described in Section 4714, is not highly likely to compromise the security of the particular state hospital under consideration for the individual's placement.
- (b) "High security risk" means that the individual, based on the assessment by the Department of State Hospitals of the factors described in Section 4714, is likely or highly likely to compromise the security of the particular state hospital under consideration for the individual's placement.
- (c) "Psychiatric acuity" means that an individual's mental illness is causing complications which put the individual at risk of death or serious injury while awaiting admission. An individual's aggressive behavior alone shall not be sufficient to support a finding of psychiatric acuity.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.  
Reference: Sections 1370 and 1370.01, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.

#### **4710. Date of Admission of Individuals Found Incompetent to Stand Trial.**

- (a) In scheduling the admission of individuals judicially committed to the Department of State Hospitals as Incompetent to Stand Trial, the Department shall admit each individual to a state hospital according to the date the court committed the individual to the Department. Actual date of admission may change upon consideration of any of the following factors:
  - (1) Bed availability at the facility under consideration for the individual's placement;
  - (2) Whether the individual exhibits psychiatric acuity which may indicate the need for admission to a facility, notwithstanding the date the court committed the individual to the Department;

- (3) Whether the facility under consideration for the individual's placement can presently clinically accommodate the medical needs of the individual; or
- (4) The ability of the committing county to reasonably timely transport the individual to the facility under consideration for the individual's placement.



- (b) Individuals judicially committed to the Department of State Hospitals as Incompetent to Stand Trial may be placed in a jail-based competency program pursuant to Penal Code section 1370. If the jail-based competency program determines that it cannot appropriately treat the individual, the individual shall be admitted to a state hospital according to the date the court committed the individual to the Department.
- (c) In cases wherein an individual has been treated by the Department of State Hospitals, found competent, and returned to the committing county, and wherein the individual's competency is challenged by any party and the court subsequently commits the individual to the Department of State Hospitals as Incompetent to Stand Trial, the Department shall admit the individual according to the most recent date the court committed the individual to the Department.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Sections 1370, 1370.01, and 1372, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code; *People v. Rells* (2000) 22 Cal.4th 860; *People v. Mixon* (1990) 225 Cal.App.3d 1471.

**4711. Required Documentation for Admission of Individuals Found Incompetent to Stand Trial.**

- (a) A county judicially committing an individual to the Department of State Hospitals as Incompetent to Stand Trial shall submit a commitment packet to the Department for review and approval prior to the admission of the individual.
- (b) The commitment packet shall include the following items:
  - (1) The commitment order, including a specification of the charges.
  - (2) A computation or statement setting forth the maximum term of commitment.
  - (3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

- (4) The State's summary criminal history information.
- (5) Any arrest report from police departments or other law enforcement agencies.
- (6) Any court-ordered psychiatric examination or evaluation reports.
- (7) The placement recommendation report prepared by the community program director of the forensic conditional release program.
- (8) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Penal Code section 290 or any pending Penal Code section 1368 proceeding arising out of a charge of a Penal Code section 290 offense.
- (9) Any medical records as described in section 4712.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Sections 1370 and 1370.01, Penal Code; Section 7228, Welfare and Institutions Code; Title 45, Code of Federal Regulations, Section 164.508; and *In re Loveton* (2016) 244 Cal.App.4th 1025.

**4712. Required Medical Records for Admission of Individuals Found Incompetent to Stand Trial.**

- (a) The following medical documentation of the individual, if available, shall be provided with the individual's commitment packet:
  - (1) All progress that pertain to behavioral incidents;
  - (2) Current medication and dosage;
  - (3) Compliance with current or previous medication;
  - (4) Laboratory results and consultations;
  - (5) Psychiatric evaluation from the most recent admission;
  - (6) Records or incidences of self-injurious behavior, suicide watch, or use of safety cell;
  - (7) Any notes on recent physical exams or medical history;
  - (8) Any advance health care directive;

- (9) Any consent forms for treatment; and
  - (10) Any other court-ordered medical treatment.
- (b) Under any of the following conditions, medical documentation including treatment plans, if available, shall be provided with the individual's commitment packet:
- (1) Renal dialysis (hemodialysis or peritoneal dialysis);
  - (2) Non-ambulation or the individual's need for prosthetics, walkers, or assistance to ambulate;
  - (3) Any stage of pregnancy or any prenatal care information or complications;
  - (4) Continuous oxygen, continuous respiratory monitoring, ventilator devices, or nebulizer for airway treatment;
  - (5) Cancer;
  - (6) Congestive heart failure;
  - (7) Blood or spinal fluid shunt currently in place or shunt for hydrocephalus;
  - (8) Any required injections;
  - (9) Any open wound not yet healed or any untreated open wound;
  - (10) Ostomy;
  - (11) Cirrhosis of the liver;
  - (12) Active inflammatory bowel diseases, complications by intestinal obstruction, subocclusion, severe fistulas, or active rectal bleeding;
  - (13) Inability of the individual to provide basic self-care or any other condition of the individual that requires skilled nursing level of care;
  - (14) Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS);
  - (15) Tuberculosis; or

(16) Any other significant medical condition.

- (c) If any of the above documents in this Section does not exist or is otherwise unavailable, the committing county shall advise the Department in writing of such nonexistence or unavailability.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Section 1370 and 1370.01, Penal Code; Section 7228, Welfare and Institutions Code; Title 45, Code of Federal Regulations, Section 164.508; and *In re Loveton* (2016) 244 Cal.App.4th 1025.

**4713. Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Medical Records Review.**

- (a) The Department of State Hospitals shall evaluate the medical records provided in the commitment packet to determine the appropriate facility for admission according to the medical needs of the individual.
- (b) A triage nurse in the admissions unit of the state hospital under consideration for the individual's placement shall review the medical records provided in the commitment packet.
- (c) Upon review, the triage nurse in the admissions unit of the state hospital under consideration for the individual's placement shall consult with the chief physician and surgeon or designee in that admissions unit to determine whether the particular state hospital is able to provide the necessary care or services to the individual.
- (d) The chief physician and surgeon or designee in the admissions unit of the state hospital under consideration for the individual's placement shall determine whether the particular state hospital is able to provide the necessary care or services to the individual.
- (e) If the chief physician and surgeon or designee in the admissions unit of the state hospital under consideration for the individual's placement determines that the particular state hospital is unable to provide the necessary care or services to the individual, the Department's Director or designee shall determine the appropriate facility for the individual's placement.

Note: Authority cited: Sections 4005.1 and 4027. Reference: Sections 1370 and 1370.01, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.



**4714. Security Risk Assessment of Individuals Found Incompetent to Stand Trial.**

- (a) To determine the appropriate facility for admission, the Department of State Hospitals shall assess the security risk of each individual judicially committed to the Department as Incompetent to Stand Trial.
- (b) The security risk assessment shall consider the following:
- (1) The individual's risk of escape, based on the individual's history of escape or attempted escape from any locked facility;
  - (2) Any new or additional information about the individual, including but not limited to a change in commitment status, divorce by spouse, death of a family member of the individual, or birth of the individual's child, received by the Department within 30 days prior to completion of the security risk assessment;
  - (3) The individual's age;
  - (4) Any diagnosis of the individual, based on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (May 18, 2013), or current edition, hereby incorporated by reference, of an antisocial, borderline, or narcissistic personality disorder;
  - (5) The number of the individual's prior felony convictions;
  - (6) The individual's pending criminal charges and the maximum exposure the individual is facing for each pending charge, at the time of assessment; and
  - (7) The individual's current medical condition.
- (c) Upon the Department's security risk assessment, the Department shall determine whether the individual is a low or moderate security risk or a high security risk.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.  
Reference: Sections 7228 and 7230, Welfare and Institutions Code.

**4715. Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Security Risk Assessment.**

- (a) An individual judicially committed to the Department of State Hospitals as Incompetent to Stand Trial, who the Department has determined to be a low or moderate security risk pursuant to Section 4714, shall be appropriate for admission to the following state hospitals: Department of State Hospitals - Atascadero, Department of State Hospitals - Patton, Department of State Hospitals - Napa, or Department of State Hospitals - Metropolitan.
- (b) An individual judicially committed to the Department of State Hospitals as Incompetent to Stand Trial, who the Department has determined to be a high security risk pursuant to Section 4714, shall be appropriate for admission only to Department of State Hospitals - Atascadero or Department of State Hospitals - Patton.

Note: Authority cited: Sections 4005.1, 4027 and 7225, Welfare and Institutions Code.

Reference: Sections 7228 and 7230, Welfare and Institutions Code.

**4716. Placement of Individuals Found Incompetent to Stand Trial Upon Completion of Commitment Packet.**

- (a) Except as provided for in Section 4716, subdivision (b), the Department of State Hospitals shall admit an individual judicially committed to the Department as Incompetent to Stand Trial only when a completed commitment packet as specified in Section 4711 has been received, reviewed, and approved by the Department.
- (b) The Department at its sole discretion may admit an individual whose commitment packet is incomplete only if the Department determines pursuant to Section 4717 that the individual exhibits psychiatric acuity which may indicate the need for admission to a state hospital notwithstanding the date the court committed the individual to the Department.
- (c) Upon review of the commitment packet, the Executive Director or designee of each state hospital under consideration for the individual's placement has the final authority to determine whether the individual shall be placed at that particular state hospital. If the Executive Director or designee determines that the individual is not appropriate for placement at that particular state hospital, the Department's Director or designee shall determine the appropriate facility for the individual's placement.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.

Reference: Sections 1370 and 1370.01, Penal Code; Section 7228, Welfare and Institutions Code.

**4717. Psychiatric Acuity Review of Individuals Found Incompetent to Stand Trial.**

- (a) An individual shall be admitted to a state hospital notwithstanding the date the court committed the individual to the Department if the Department determines that the individual is psychiatrically acute.
- (b) The Department's medical director or designee has the final authority to determine whether the individual exhibits psychiatric acuity which may indicate the need for admission to a state hospital notwithstanding the date the court committed the individual to the Department.
- (c) To request a psychiatric acuity review of an individual, the committing county's clinician who is responsible for the individual's clinical assessment or its designee shall contact the Department's medical director or designee about the individual's psychiatric acuity and the psychiatric acuity needs of the individual.
- (d) The committing county or its clinician or designee shall provide the Department's medical director or designee medical information and documentation supporting psychiatric acuity. Such documentation may include but is not limited to:
  - (1) Any notes on use of safety cell;
  - (2) Current medication and dosage or lack of medication;
  - (3) Medical laboratory results; or
  - (4) Any additional treatment records from local health care providers.
- (e) Within 72 hours after the committing county's clinician or designee contacts the Department's medical director or designee and after receipt of sufficient documentation, the Department's medical director or designee shall determine whether the individual's psychiatric acuity may indicate the need for admission to a state hospital notwithstanding the date the court committed the individual to the Department.

Note: Authority cited: Sections 4005.1, 4027 and 7225, Welfare and Institutions Code.

Reference: Sections 1370 and 1370.01, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.