



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. 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 9th 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 9th Street, Room 410
Sacramento, CA 95814
Telephone: (916) 651-8544
e-mail: Dennalee.Folks@dsh.ca.gov

The back-up contact person for these inquiries is:

Shazida Chechi
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, CA 95814
Regulations' Telephone: (916) 651-3222
E-mail: 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.