

DEPARTMENT OF STATE HOSPITALS
SUPPLEMENT TO THE 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

This Supplement to the Initial Statement of Reasons provides further detail on the specific purpose, problem, and rationale of each proposed regulation for section 4700, subsection (c); section 4711; section 4714, subsection (b); and section 4717, subsections (c), (d), and (e).

**SECTION 4700
DEFINITIONS**

SUBSECTION (c)

Purpose:

This subsection defines psychiatric acuity in persons found Incompetent to Stand Trial (IST). This addition provides a uniform definition of when an IST, currently in county jail custody, may be considered for admission to a state hospital notwithstanding his or her current place in line which is based on his or her commitment date.

Necessity:

ISTs are committed to the Department of State Hospitals (the "Department") from all 58 counties within the state. The Department admits ISTs in the order of each defendant's date of commitment.

There may also be instances when an IST, who suffers from serious mental health issues and may be quickly deteriorating due to his or her mental illness, may be unable to receive adequate mental health care to ensure that the IST is safe. In these instances, an IST may benefit from expedient admission. This subsection provides for those emergent circumstances.

This definition ensures that aggressive behavior alone shall not support a finding of psychiatric acuity. The fact alone that an IST has behavioral issues, while challenging for jail staff, shall not necessitate the IST's admission to a state hospital notwithstanding his or her current place in line which is based on his or her commitment date. With this definition, the Department reserves the admission based on emergent psychiatric acuity to those ISTs who are at risk of serious harm or death due to their mental illness.

**SECTION 4711
REQUIRED DOCUMENTATION FOR ADMISSION OF INDIVIDUALS
FOUND INCOMPETENT TO STAND TRIAL**

Purpose:

This subsection lays out the documents required to be in an IST's commitment packet, to be provided to the Department for review and evaluation.

Necessity:

This subsection duplicates Penal Code section 1370 which is cited as "reference" for the proposed regulation. While duplicative, it is necessary to satisfy the "clarity" standard of Government Code section 11349.1, subdivision (a)(3). Since the Department is clarifying the definition of medical records in section 4712 of these regulations, it is important to understand that medical records are part of the list of required documents that a county is to provide the Department pursuant to statute.

**SECTION 4714
SECURITY ASSESSMENT OF INDIVIDUALS FOUND INCOMPETENT TO STAND TRIAL**

SUBSECTION (b)

Purpose:

This subsection sets forth the factors that the Department will consider in determining the security risk of an IST.

Necessity:

This subsection is necessary to standardize factors the Department will use in determining security risk, which will then facilitate an IST's placement into the most appropriate state hospital. These factors address security risk, which is essentially the plausibility that the IST may escape. Each state hospital has limitations, based on clinical factors and building design, on the security risk levels against which it can protect. As a result, ISTs of certain risk levels may be appropriate for admission to one or some state hospitals but not others. Also per statute, some state hospitals are designated for low-to-moderate security risk while other state hospitals are for more serious security risk.

The following risk factors laid out in the subsequent subsections are necessary for the following reasons.

Section 4714, subsection (b)(1): "The individual's risk of escape, based on the individual's prior history of escape or attempted escapes from any locked facility[.]"

- It is necessary for the Department to consider an IST's history of escape because any history may inform an IST's likelihood of repeating this behavior and attempting to escape again in the future.

Section 4714, subsection (b)(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 Whether, within 30 days prior to completion of the department's security risk assessment the department

receives new information about the individual, such as a change in commitment status, divorce by a spouse, death of a family member, or birth of a child [.]”

- It is necessary for the Department to consider external factors such as the above which may influence or motivate an IST to find attempting to escape a real option.

Section 4714, subsection (b)(3): “The individual’s age[.]”

- It is necessary for the Department to consider an IST’s age because it informs an IST’s physical ability to attempt an escape or to harm others while in the state hospital.

Section 4714, subsection (b)(4): ~~“Any diagnosis of whether the individual, has been diagnosed with an antisocial, borderline, and/or narcissistic personality disorder based on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (May 18, 2013), hereby incorporated by reference, of an antisocial, borderline, or narcissistic personality disorder[.]”~~

- It is necessary for the Department to consider the particular mental illness(es) from which an IST suffers because certain mental illnesses may significantly impair an individual’s volition or ability to comply with rules.

Section 4714, subsection (b)(5): “The number of the individual’s prior felony convictions[.]”

- It is necessary for the Department to consider an IST’s felony record because a history of serious criminal behavior may inform an IST’s likelihood of repeating this behavior or committing other criminal behavior which may include attempting to escape or harm others while in the state hospital.

Section 4714, subsection (b)(6): “The individual’s current length of sentence pending criminal charges and the maximum exposure the individual is facing for each pending charge, at the time of assessment[.]”

- It is necessary for the Department to consider an IST’s pending criminal charges and maximum exposure because these are factors which may affect an IST’s perception of his potential risk and potential gain in attempting to escape or harm others while in the state hospital.

Section 4714, subsection (b)(7): “The individual’s current medical condition[.]”

- It is necessary for the Department to consider an IST’s medical condition, if any, because it informs an IST’s physical ability to attempt an escape or to harm others while in the state hospital.

**SECTION 4717
PSYCHIATRIC ACUITY REVIEW OF INDIVIDUALS
FOUND INCOMPETENT TO STAND TRIAL**

SUBSECTION (c)

Purpose:

This subsection sets forth the procedure as to how a county, believing that an IST may be psychiatrically acute, may request that the Department evaluate the IST and make a determination on whether the IST exhibits psychiatric acuity such that would necessitate

expedient admission to a state hospital notwithstanding his or her current place in line which is based on his or her commitment date.

Necessity:

This subsection is necessary to ensure that the county understands the process of reaching the Department and requesting an evaluation when it believes that an IST may be psychiatrically acute. This subsection provides for specifically the county clinician to contact the Department because the clinician would be in the best position to make the initial assessment as to an IST's acuity, if any, since he or she is interacting with the IST and would be aware of any deterioration or need for more acute care.

SUBSECTION (d)

Purpose:

This subsection sets forth which documentation the county shall provide to the Department so it can evaluate an IST for psychiatric acuity and make a determination.

Necessity:

This subsection is necessary to ensure that the county knows which documents are necessary for the Department to evaluate and determine whether an IST is psychiatrically acute. The documentation required is the documentation customarily relied on by clinicians to determine whether a patient presents with psychiatric acuity. The documents provide detailed information about the IST's behavioral and mental health condition and needs. This documentation also ensures that a request for psychiatric acuity is based on emergent clinical need, not an attempt to circumvent the Department's process of admitting individuals based on date of commitment.

SUBSECTION (e)

Purpose:

This subsection establishes a timeline, from the time the county requests the evaluation to the time the Department evaluates and determines whether an IST is psychiatrically acute.

Necessity:

This subsection is necessary to ensure that the Department's evaluation of psychiatric acuity is timely and without undue delay, while providing for time, if needed, for the county clinician and the Department to further discuss an IST under review. The three-day period also allows the state hospital to make any necessary arrangements to address the potential serious risk to the IST.