

**FINAL REGULATION ORDER
INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS**

Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations

Adopt new Article 7, new sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716 and 4717, Chapter 16, Division 1, Title 9, California Code of Regulations, to read as follows:

[NOTE: The pre-existing emergency regulation text is set forth below in normal type. The amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.]

Article 7. Admissions

§ 4700. Definitions.

- (a) “Low or moderate security risk” means ~~any that the individual, who has no escape/~~ escape attempt(s) history from a locked facility, state hospital, locked psychiatric facility, or correctional facility 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 an individual, with a history of escape/escape~~ attempt(s) from a locked facility or a successful escape from a state hospital, locked psychiatric facility, or correctional facility 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 ~~an individual’s condition that is evidenced by the fact that~~ an individual’s mental illness is causing leading to complications which put the individual at risk of death or serious injury while awaiting admission. For purposes of assessing psychiatric acuity, the An individual’s would need to exhibit more than 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~~ When scheduling the admission of individuals judicially committed by the courts to the Department of State Hospitals as Incompetent to Stand Trial pursuant to Penal Code section 1370, the Department shall ~~will~~ admit each such individuals to a state hospital according to the ~~in relation to the individuals' respective commitment dates the court committed the individual to the Department. Actual date~~ This order of admission by commitment date may be changed by the department upon consideration of ~~under~~ any of the following circumstances factors:
- (1) Bed availability at the facility under consideration for the individual's placement;
 - (2) Whether the individual exhibits psychiatric acuity of the individual indicates which may indicate the need for a priority admission to a facility, notwithstanding the date the court committed the individual to the Department;
 - (3) Whether the medical needs of the individual can presently be clinically accommodated by the facility under consideration for the individual's placement; can presently clinically accommodate the medical needs of the individual; or
 - (4) The transportation ability or timing of the committing county to reasonably timely transport the individual to the facility under consideration for the individual's placement; or the committing county's inability to transport the committed individual for any other reason.
- (b) If an individual found Incompetent to Stand Trial is judicially committed ~~For individuals committed and/or admitted by the courts to the Department of State Hospitals who are and placed in a jail-based competency program pursuant to Penal Code section 1370, if that jail-based competency and that program determines tthat it cannot appropriately treat~~ serve the individual, the individual shall be admitted to a state hospital according to the ~~in the order of admission that reflects the individual's original commitment date~~ the court committed the individual to the Department of State Hospitals.
- (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. Admissions Required Documentation for Admission of Individuals Found Incompetent to Stand Trial.

- (a) A county judicially committing an individual to the Department of State Hospitals ~~under Penal Code section 1370 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 Sstate's summary of the individual's criminal history ~~information~~.
 - (5) Any arrest report(s) 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 Documentation.

(a) A county judicially committing an individual to the Department of State Hospitals as Incompetent to Stand Trial shall provide the The following medical documentation of the individual, if applicable, with shall be supplied in the individual's commitment packet; ~~if available;~~

- (1) ~~All~~Any progress notes by a nurse, psychiatrist, medical doctor, or that pertain to behavioral incidents ~~within the last 10 days;~~
- (2) Current medications and dosages;
- (3) ~~Medication compliance documentation~~ Compliance with current or previous medication;
- (4) Laboratory results/~~work~~ and consultations;
- (5) ~~Recent admission p~~Psychiatric evaluation from the most recent admission;
- (6) ~~Safety cell usage or suicide watch r~~Records or incidences of self-injurious behavior, suicide watch, or use of safety cell;
- (7) Any notes on recent physical exams or medical history ~~notes;~~
- (8) Any advance health care directive;
- (9) Any consent forms for treatment; and
- (10) Any other court-ordered medical treatment.

(b) If the individual presents with any of the following conditions, the committing county shall provideOther medical documentation, including treatment plans, ~~will be required for the following conditions, if available~~ if applicable, 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 pPregnancy, ~~near term (last two months),~~ or any prenatal care information or complications;

- (4) Continuous oxygen, continuous respiratory monitoring ~~such as pulse oximetry~~, ventilator devices ~~such as CPAP for sleep apnea~~, or nebulizer for airway treatment;
- (5) Cancer;
- (6) Congestive heart failure;
- (7) Blood or spinal fluid shunt currently in place, ~~such as Per-o-cath~~, 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 ~~requiring~~ skilled nursing level of care;
- (14) Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS);
- (15) Tuberculosis; ~~and/or~~
- (16) Any other significant medical condition.

(c) Prior to the individual's transport to the state hospital, the committing county shall provide updated medical records to the state hospital under consideration for the individual's placement.

(d) 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 use 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 ~~department admissions unit's triage nurse in the admissions unit of the state hospital under consideration for the individual's placement~~ shall review all documents related to an individual's medical condition(s) the medical records provided in the commitment packet.
- (c) Upon review, the ~~The department's admissions unit's triage nurse in the admissions unit of the state hospital under consideration for the individual's placement~~ shall consult with the ~~department's admissions unit's physician or chief physician and surgeon or designee in that admissions unit~~ to determine address whether the particular state hospital facility, proposed for the individual's placement, is able to provide the necessary care or services ~~needed by the patient's medical condition(s) 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, Welfare and Institutions Code.

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

§ 4714. Security Risk Assessment for Placement of Individuals Found Incompetent to Stand Trial.

- (a) To determine the appropriate facility for admission, the ~~The~~ Department of State Hospitals shall assess ~~the conduct a security risk assessment of each individual~~ judicially committed to the Department as Incompetent to Stand Trial pursuant to Penal Code section 1370 prior to admission.

(b) To determine the security risk assessment shall include of an individual, the Department may consider the following:

- (1) The individual's risk of escape, based on the individual's prior history of escape or attempted escapes from at 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. 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;
- (3) The individual's age;
- (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;
- (5) The number of the individual's prior felony convictions;
- (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; 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.

The Department of State Hospitals may not admit an individual under Penal Code section 1370 until the commitment packet specified in section 4711 is received, reviewed, and approved by the department in order to determine the proper placement within the department. The department may admit a committed individual whose

~~commitment packet is incomplete when the department determines, pursuant to section 4716, that the individual's psychiatric acuity indicates the need for an immediate admission to a state facility.~~

(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: ~~Section 1370, Penal Code; and Sections 7228 and 7230~~, Welfare and Institutions Code.

§ 4716. Placement of Individuals Found Incompetent to Stand Trial Upon Completion of Commitment Packet ~~Psychiatric Acuity Review.~~

(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 ~~if an individual committed to the department pursuant to Penal Code section 1370 is psychiatrically acute, the individual may be reprioritized in the order of commitment in the admission process.~~

(b) In cases wherein the Department, upon review, discovers that a commitment packet is incomplete, it shall advise the committing county of any missing documentation within 14 calendar days of such discovery.~~The committing county's clinician responsible for the individual's clinical assessment shall contact the Department of State Hospitals' medical director, or designee, about an individual's psychiatric acuity and the psychiatric acuity needs of the individual.~~

(c) 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. ~~The committing county shall provide the medical director, or designee, the medical information and documentation that supports the psychiatric acuity. Such documentation may include, but is not limited to:~~

- ~~(1) Safety cell notes;~~
- ~~(2) Current medications or lack of medication;~~
- ~~(3) Medical lab work; or~~
- ~~(4) Any additional treatment records from local health care providers.~~

(d) Upon review of the commitment packet, the Medical 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 Medical 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. ~~The medical director of the Department of State Hospitals, or designee, is the final authority for determining psychiatric acuity of an individual for purposes of expediting admission to a state facility.~~

(e) The medical director of the Department of State Hospitals, or designee, will make a decision on whether to expedite admission of an individual due to his or her psychiatric acuity within 72 hours of contact by the committing county's clinician and when the department receives sufficient documentation.

Note: Authority cited: Sections 4005.1- ~~and 4027 and 7225~~, Welfare and Institutions Code.
Reference: Sections 1370 and 1370.01, Penal Code; Section 7228 ~~and 7230~~, Welfare and Institutions Code.

§ 4717. ~~State Hospital Placements~~ Psychiatric Acuity Review of Individuals Found Incompetent to Stand Trial for Security Risks.

(a) An individual shall be admitted committed 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. ~~The Department of State Hospitals shall consider an individual committed to the department pursuant to Penal Code section 1370, and who the department determines is a low/moderate security risk, only for admission to Department of State Hospitals – Atascadero, Department of State Hospitals – Patton, Department of State Hospitals – Napa, or to Department of State Hospitals – Metropolitan.~~

- (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~~The Department of State Hospitals shall consider an individual committed pursuant to Penal Code section 1370, and who the department determines is a high security risk, only for admission to Department of State Hospitals - Atascadero or to Department of State Hospitals - Patton.~~
- (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 3 business days 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. The determination of the Department's medical director or designee shall be based only on documentation provided by the committing county pursuant to Section 4717, subdivision (d) and, if warranted, discussions with the county's clinician or designee.

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.