

DEPARTMENT OF STATE HOSPITALS
NOTICE OF 15-DAY COMMENT PERIOD

REGARDING

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 7. Admissions
Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716, and 4717

This notice announces a supplemental period in which **the public may comment on the entire text of the proposed regulations** on the admissions process of defendants found Incompetent to Stand Trial (IST) to state hospitals. This notice also announces modifications to the originally proposed text of these regulations pursuant to Government Code section 11346.8, subsection (c) and the California Code of Regulations, title 1, section 44. A copy of the modified text is included with this notice.

No action by the public is necessary unless persons wish to comment on the proposed regulations.

The public may comment on the entire text of the proposed regulations and is not limited to commenting on the modified text.

The originally proposed regulatory action is described in detail in the Initial Statement of Reasons released to the public on January 13, 2017, and can be found at: http://www.dsh.ca.gov/About_Us/docs/Regulations/Initial_Statement_Reasons_01132017.pdf. On February 27, 2017, DSH held a public hearing on the proposed regulations and received both oral comments and written comments.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS

Modifications made to the originally proposed text are indicated as follows: added text is in underline and deleted text is in ~~strikeout~~.

Highlighting in yellow below is for ease of review only and does not indicate any additional modification.

Section 4710, subsection (b) is to be amended to:

- A court may commit an individual found ~~judicially committed to the Department of State Hospitals as Incompetent to Stand Trial to~~ may be placed in a jail-based competency program pursuant to Penal Code section 1370, prior or concurrently with committing that individual to the Department of State Hospitals. If an individual found Incompetent to Stand Trial is judicially committed to and placed in a ~~the~~ jail-based competency program, and that 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 jail-based competency program or to the Department, whichever date is earlier ~~to the Department.~~

- **Rationale:** These changes are necessary because they clarify that the court may commit an IST defendant to any public or private treatment facility, including a county jail treatment facility, pursuant to Penal Code section 1370, subdivision (a)(1)(B)(i). The statute gives the court discretion regarding to which facility to commit an IST defendant, and the court may, and does in practice, commit an IST defendant to multiple competency restoration programs, including DSH. For example, a court may commit an IST defendant to a jail-based competency program and also commit the IST defendant to DSH in the same commitment order. In the event the jail-based competency treatment program recommends an IST defendant be transferred to and receive further treatment at a state hospital, the IST defendant may be transported to a state hospital without having to return to the court for a further order. These changes are necessary to make clear that this subsection aims to regulate only the admission of an IST defendant to a state hospital in the event that the defendant had just been treated at a jail-based competency program prior to his or her transfer to DSH.

Section 4712, subsection (a) is amended to:

- “The A county judicially committing an individual to the Department of State Hospitals as Incompetent to Stand Trial shall provide the following medical documentation of the individual, if available, shall be provided with the individual’s commitment packet[.]”
- **Rationale:** This change from passive voice to active voice is necessary to clarify that the county which commits the IST defendant to DSH is the one that must provide to DSH, with the commitment packet, the necessary medical documentation on that IST defendant.

Section 4712, subsection (b) is amended to:

- “If the individual presents with Under any of the following conditions, the committing county shall provide medical documentation including treatment plans, if available, shall be provided with the individual’s commitment packet[.]”
- **Rationale:** This change from passive voice to active voice is necessary to clarify that the county which commits the IST defendant to DSH is the one that must provide to DSH, with the commitment packet, medical documentation related to a medical condition or conditions that the IST defendant has.

Section 4717, subsection (e) is to be amended to:

- “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. The determination of the Department’s medical director or designee shall be based only on medical documentation provided by the committing county pursuant to Section 4717, subsection (d) and, if warranted, discussions with the county’s clinician or designee.”
- **Rationale:** These changes are necessary because they clarify that the county must provide documentation on what it believes to be psychiatric acuity and that DSH’s medical director has the final authority on determining whether an IST defendant suffers from psychiatric acuity such that the individual warrants an admission to a state hospital

notwithstanding the date of his or her commitment to DSH. These changes are necessary because they make clear that DSH's medical director will base this determination only on available medical documentation and records provided to DSH by the committing county and, if DSH's medical director believes it is needed, a clinical discussion between DSH's medical director and the county clinician. This amendment is necessary because it provides direction to courts on how DSH determines whether an IST defendant meets psychiatric acuity criteria.

WRITTEN COMMENTS

DSH invites interested persons to provide comment. The public may comment only in writing. Any interested person may submit to the Department a written comment relevant to the proposed regulatory action and modified regulations. Please submit written comments to:

Regulations Unit
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, California 95814
Fax: (916) 651-3090
Email: DSH.Regulations@dsh.ca.gov

All written comments received by May 9th, 2017, no later than 5:00 p.m., which pertain to the proposed regulations and modifications will be considered and responded to by DSH. DSH will prepare a response to comments and submit to OAL a final text of the proposed regulations and modified regulations. A Final Statement of Reasons will also be submitted to OAL and will be posted on the DSH website.

CONTACT PERSONS

Inquiries regarding the proposed regulations may be directed to:

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The backup contact person is:

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