

## FINDING OF EMERGENCY

### A. Department of State Hospital's (DSH) Finding of Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1.

### B. Description of Specific Facts Which Constitute the Emergency

#### The Necessity for the Proposed Regulations

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.

This decision, however, has pushed many other counties to pursue standing orders for their counties as well, because this 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 IST referrals from other counties, a standing order will help expedite the admission. In *In re Loveton*, the Court also discussed the need for the superior courts to provide complete commitment referral packets to DSH. In the past, DSH has received numerous incomplete commitment packets from various counties, and in recent months, these incomplete packets have contributed to some delays in admitting patients for treatment to DSH. DSH proposes these emergency regulations in an effort to create a uniform admissions criteria and process for all patients committed to DSH statewide, to implement and conform statewide IST referral and admission processes to the *Loveton* decision. The proposed emergency regulations would also help ensure that all the necessary documents are provided to an individual DSH hospital for a smooth admission and continuity of care.

#### Benefits of the Proposed Emergency Regulations

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

### Effect of the Proposed Emergency Regulations

- (1) These proposed regulations are consistent with existing regulations and will implement and comply with *In re Loveton*.
- (2) There are no federal regulations previously adopted or amended that prohibit the proposed regulations.
- (3) These regulations will provide uniform rules to all counties and will provide clarification in the admission process for all counties and individuals being admitted to DSH pursuant to Penal Code section 1370.

### The Finding of Emergency

DSH finds that the proposed regulatory amendment is necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” (Gov. Code, § 11342.545.) DSH currently is attempting to admit patients simultaneously and in a timely manner from all 58 counties, while IST referrals from many of these counties have been increasing substantially week after week. DSH would like to implement these emergency regulations as soon as possible to immediately conform to the process set forth in the recently issued *In re Loveton* decision. *In re Loveton* was decided and published on February 11, 2016, and became final on April 12, 2016. While DSH is also working on system-wide bed expansion, DSH has been sued by the ACLU in Alameda Superior Court as well as being sued in a potential class action lawsuit in federal court from Ventura County patients, where both lawsuits challenge the timelines standards and processes related to IST referrals. Further, when a patient has not been admitted to DSH after a period of time, some courts have released the patient into the community.

Accordingly, these emergency regulations will implement the recent *In re Loveton* decision, and in doing so, provide necessary clarification of the process, timelines, and the order in which patients shall be admitted to DSH by all of the superior courts. The emergency regulations will also help ensure that the counties are aware of all of the necessary requirements and better ensure a smooth transition of patient care. The proposed regulations would provide all the committing courts a clear understanding of how and when the patients will be admitted to DSH. The proposed regulations will also assist in ensuring a better delivery of treatment.

### C. Authority and Reference Citations

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

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

## D. Informative Digest and Policy Statement Overview

### Policy Statement

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 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.

## E. Summary of Proposed New Regulations

### Add Section 4700

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4700 to provide definitions of terminology that is used by current statutes and by the proposed regulations.

### Add Section 4710

This regulatory action would add Title 9, Division 1, Chapter, 16, Article 7, Section 4710 to provide the factors that DSH will use to determine when a patient will be admitted to a DSH facility.

### Add Section 4711

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4711 to clarify the specific documents that are required for the admission of a patient to DSH.

### Add Section 4712

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4712 to provide further direction as to what kind of medical documentation and information is required.

### Add Section 4713

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4713 to provide direction of how the medical documentation and information will be reviewed and by whom.

### Add Section 4714

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4714 to provide what is evaluated in determining the security risk to determine placement at a hospital within the DSH system.

### Add Section 4715

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4715 to clarify that a patient cannot be admitted to a hospital within DSH, until a commitment packet as described in section 4712 is received, reviewed, and approved by DSH.

### Add Section 4716

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4716 to provide an exception of when a patient may be more rapidly admitted to DSH and the documentation needed to provide the necessary information to determine psychiatric acuity.

### Add Section 4717

This regulatory action would add Title 9, Division 1, Chapter 16, Article 7, Section 4717 to provide the different security risk levels at the various DSH hospitals.

### F. Technical, Theoretical, and Empirical Study or Report

None

### G. Determinations

Substantial Difference from Existing Comparable Federal Regulations or Statute: None.

Mandates on Local Agencies or School Districts: County courts are State funded, and the courts are statutorily required to provide the commitment packet pursuant to Penal Code section 1370. However, the proposed regulation provides a specific timeline of when the commitment packet is to be provided to DSH.

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 that there will be no fiscal impact in the current State Fiscal Year to Local Agencies.

Non-discretionary Costs or Savings Imposed on Local Agencies: While there might be additional county personnel resources involved in implementing a part of these regulations, 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 increased state legal costs, as DSH may be ordered to appear in court more frequently, until all of the courts become comfortable with the new proposed regulation and the new timeline these emergency 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.

#### MATERIAL INCORPORATED BY REFERENCE

None.