

## **INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS**

### **TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 1. DEPARTMENT OF MENTAL HEALTH CHAPTER 16. STATE HOSPITAL OPERATIONS ARTICLE 7. ADMISSIONS**

#### **Add Sections 4700**

#### **4700. Definitions**

- (a) "Low/Moderate security risk" means any individual who has no escape/escape attempt(s) history from a locked facility, state hospital, locked psychiatric, or correctional facility.
- (b) "High security risk" means an individual with a history of escape/escape attempt(s) from a locked facility or a successful escape from a state hospital, locked psychiatric, or correctional facility.
- (c) "Psychiatric Acuity" means an individual's condition that is evidenced by the fact that an individual's mental illness is leading to complications which put the individual at risk of death or serious injury while awaiting admission. For purposes of assessing psychiatric acuity, the individual would need to exhibit more than aggressive behavior alone.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.  
Reference: Penal Code section 1370, Welfare and Institutions Code sections 7228 and 7230.

#### **4710. Admission of Individuals Found Incompetent to Stand Trial**

(a) When scheduling admission of individuals committed pursuant to Penal Code section 1370 by the courts to the Department of State Hospitals, the Department will admit such individuals in relation to the individuals' respective commitment date, such that the order of admission will be determined by the earlier of the individuals' respective commitment dates. This order of admission by commitment date may be changed by the Department under any of the following circumstances:

- (1) Bed availability at the facility under consideration for the individual's placement;
- (2) Whether the psychiatric acuity of the individual indicates the need for a priority admission to a facility;

- (3) Whether the medical needs of the individual can presently be clinically accommodated by the facility under consideration for the individual's placement;
- (4) The transportation ability or timing of the committing county 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) For individuals committed and/or admitted pursuant to Penal Code section 1370 by the courts to the Department of State Hospitals who are placed in a jail-based competency program, if that jail-based competency program determines that it cannot appropriately serve the individual, the individual shall be admitted to a state hospital in the order of admission that reflects the individual's original commitment date to the Department of State Hospitals.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.  
Reference: Penal Code section 1370, subdivisions (a)(2)(A) and (a)(3)(G);  
Welfare and Institutions Code sections 7228 and 7230.

#### **4711. Admissions Documentation for Individuals Found Incompetent to Stand Trial**

(a) A county committing an individual to the Department of State Hospitals under Penal Code section 1370 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:

- (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 state summary 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 Title 9 of the California Code of Regulations, Section 4712.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027. Reference: Penal Code sections 1370, 1370.01; Welfare and Institutions Code section 7228; Code of Federal Regulations, title 45, section 164.508, *and In re Loveton* (2016) 244 Cal.App.4th 1025.

#### **4712. Medical Records Documentation**

- (a) The following medical documentation of the individual shall be supplied in the individual's commitment packet, if available;
  - (1) 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;
  - (4) Lab results/work and consultations;
  - (5) Recent admission psychiatric evaluation;
  - (6) Safety cell usage or suicide watch records or incidences of self-injurious behavior;
  - (7) Any 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) Other medical documentation, including treatment plans, will be required for the following conditions, if available:

- (1) Renal dialysis (hemodialysis or peritoneal dialysis);
- (2) Non-ambulation, or where the individual needs prosthetics, walkers, or assistance to ambulate;
- (3) Pregnancy, 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 in place, such as Prot-o-cath, or shunt for hydrocephalus;
- (8) Any required injections;
- (9) Any open wound not yet healed or untreated;
- (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 to provide basic self-care or any other condition requiring skilled nursing level of care;
- (14) HIV/AIDS;
- (15) Tuberculosis; and
- (16) Any other significant medical condition.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.

Reference: Penal Code section 1370, subdivision (a)(3)(I); Welfare and Institutions Code section 7228; Code of Federal Regulations, title 45, section 164.508, and *In re Loveton* (2016) 244 Cal.App.4th 1025.

#### **4713. Medical Records Review**

- (a) The Department of State Hospitals shall use the medical records provided in the commitment packet to determine the medical needs of an individual.
- (b) A Department Admissions Unit's Triage Nurse shall review all documents related to an individual's medical condition(s).
- (c) The Department's Admissions Unit's Triage Nurse shall consult with the Department's Admissions Unit's Physician or the Chief Physician and Surgeon to address whether the particular facility, proposed for the individual's placement, is able to provide the necessary care or services needed by the patient's medical condition(s).

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.  
Reference: Penal Code section 1370, subdivision (a)(3)(I); Welfare and Institutions Code sections 7228 and 7230.

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

- (a) The Department of State Hospitals shall conduct a Security Risk Assessment of each individual committed to the Department pursuant to Penal Code section 1370 prior to admission.
- (b) The Security Risk Assessment shall include:
  - (1) The individual's prior history of escape or attempted escapes at any locked facility;
  - (2) Whether, within 30 days prior to the completion of the Department's assessment, the Department receives new information about the individual, such as a change in commitment status, divorce by spouse, death of a family member, or birth of a child;
  - (3) The individual's age;
  - (4) Whether the individual has a DSM 5 diagnosis of antisocial, borderline, and/or narcissistic personality disorder;
  - (5) The number of the individual's prior felony convictions;

- (6) The individual's current length of sentence at the time of assessment; and
- (7) The individual's current medical condition.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.  
Reference: Welfare and Institutions Code sections 7228 and 7230.

#### **4715. Placement of Individuals Found Incompetent to Stand Trial**

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.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1 and 4027.  
Reference: Penal Code section, 1370, subdivisions (a)(3)(A-H) and (a)(2)(B)(i-iii);  
Welfare and Institutions Code Section 7228.

#### **4716. Psychiatric Acuity Review**

- (a) If an individual committed to the Department pursuant to Penal Code section 1370 is psychiatrically acute, the individual may be prioritized in the order of commitment in the admission process.
- (b) 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 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) 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: Welfare and Institutions Code sections 4005.1, 4027, and 7225. Reference: Penal Code sections 1370, and 1370.01; Welfare and Institutions Code sections 7228 and 7230.

**4717. State Hospital Placements of Individuals Found Incompetent to Stand Trial for Security Risks**

(a) 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 or moderate security risk, only for admission to Department of State Hospitals – Napa, or to Department of State Hospitals – Metropolitan.

(b) 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.

Note: Authority Cited: Welfare and Institutions Code sections 4005.1, 4027, and 7225. Reference: Welfare and Institutions Code sections 7228 and 7230.