

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

[NOTE: The proposed adoption of new text and sections in the 45-day notice were released January 13, 2017 and are shown in plain text. The first 15-day proposed changes are shown in single underline to indicate additions and ~~single strikeout~~ to indicate deletions from the originally proposed regulatory text, while the proposed changes in this second 15-day notice are shown in double underline to indicate additions and ~~double strikeout~~ to indicate deletions from the originally proposed regulatory text.]

#### 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:

#### Article 7. Admissions

##### § 4700. Definitions.

- (a) “Low or moderate security risk” means that the individual, 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 individual, 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 that an individual’s mental illness is causing complications which put the individual at risk of death or serious injury while awaiting admission. An individual’s 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.

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

#### § 4710. Date of Admission of Individuals Found Incompetent to Stand Trial.

- (a) In scheduling the admission of individuals judicially committed to the Department of State Hospitals as Incompetent to Stand Trial, the Department shall admit each individual to a state hospital according to the date the court committed the individual to the Department. Actual date of admission may change upon consideration of any of the following factors:
- (1) Bed availability at the facility under consideration for the individual's placement;
  - (2) Whether the individual exhibits psychiatric acuity which may indicate the need for admission to a facility, notwithstanding the date the court committed the individual to the Department;
  - (3) Whether the facility under consideration for the individual's placement can presently clinically accommodate the medical needs of the individual; or
  - (4) The ability of the committing county to reasonably timely transport the individual to the facility under consideration for the individual's placement.
- (b) ~~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 to or concurrently with committing that individual to the Department of State Hospitals. If an individual found Incompetent to Stand Trial is judicially committed to the Department of State Hospitals 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.~~
- (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.

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

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. Required Documentation for Admission of Individuals Found Incompetent to Stand Trial.**

- (a) A county judicially committing an individual to the Department of State Hospitals 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 State's summary of the individual's criminal history information.
  - (5) Any arrest report 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.

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

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.

(a) ~~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~~ applicable, shall be provided with the individual's commitment packet:

- (1) All progress notes that pertain to behavioral incidents;
- (2) Current medication and dosage;
- (3) Compliance with current or previous medication;
- (4) Laboratory results and consultations;
- (5) Psychiatric evaluation from the most recent admission;
- (6) Records or incidences of self-injurious behavior, suicide watch, or use of safety cell;
- (7) Any notes on recent physical exams or medical history;
- (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 ~~Under~~ any of the following conditions, the committing county shall provide medical documentation including treatment plans, if ~~available~~ applicable, shall be provided 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;

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

- (3) Any stage of pregnancy or any prenatal care information or complications;
  - (4) Continuous oxygen, continuous respiratory monitoring, ventilator devices, or nebulizer for airway treatment;
  - (5) Cancer;
  - (6) Congestive heart failure;
  - (7) Blood or spinal fluid shunt currently in place 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 skilled nursing level of care;
  - (14) Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS);
  - (15) Tuberculosis; 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.
- (ed) 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.

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

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 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 triage nurse in the admissions unit of the state hospital under consideration for the individual's placement shall review the medical records provided in the commitment packet.
- (c) Upon review, the triage nurse in the admissions unit of the state hospital under consideration for the individual's placement shall consult with the chief physician and surgeon or designee in that admissions unit to determine whether the particular state hospital is able to provide the necessary care or services 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 of Individuals Found Incompetent to Stand Trial.**

- (a) To determine the appropriate facility for admission, the Department of State Hospitals shall assess the security risk of each individual judicially committed to the Department as Incompetent to Stand Trial.
- (b) To determine the security risk of an individual, the Department may ~~The security risk assessment shall~~ consider the following:

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

- (1) The individual's risk of escape, based on the individual's history of escape or attempted escape from 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 within 30 days prior to completion of the security risk assessment;
  - (3) The individual's age;
  - (4) Any diagnosis of the individual, based on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (~~May 18, 2013~~), ~~or current edition~~, 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 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.**

- (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.

## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

- (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: Sections 7228 and 7230, Welfare and Institutions Code.

#### **§ 4716. Placement of Individuals Found Incompetent to Stand Trial Upon Completion of Commitment Packet.**

- (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.

(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.

~~(b)~~ 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.

~~(e)~~ Upon review of the commitment packet, the ~~Executive 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 ~~Executive 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.

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.



## Proposed 2<sup>nd</sup> 15-Day Modifications

### INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

#### § 4717. Psychiatric Acuity Review of Individuals Found Incompetent to Stand Trial.

- (a) An individual shall be admitted 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.
- (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.
- (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 ~~72 hours~~ 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.