



California Department of  
**State Hospitals**

# **Felony Incompetent to Stand Trial Growth Cap Update**

September 2023



# Agenda

---

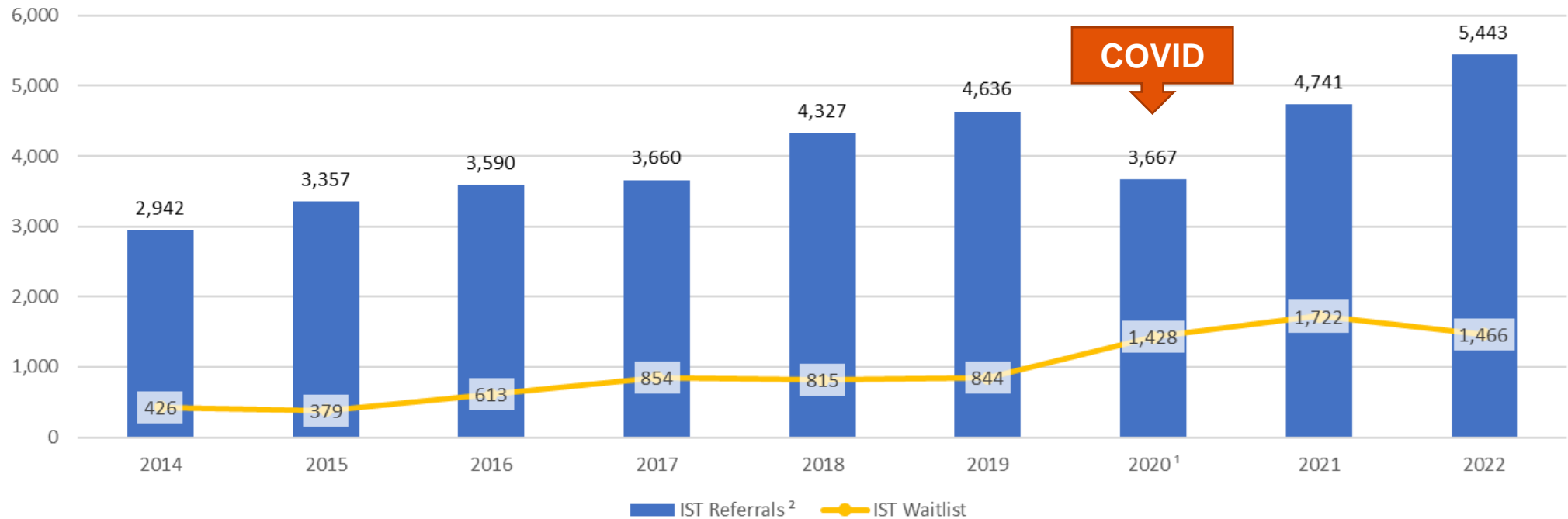
- Brief Historical Perspective
- Overview of Felony IST Growth Cap program
- Updates to IST Growth Cap program



# Brief Historical Perspective

# Department of State Hospitals IST Referrals

DSH IST Referrals and IST Waitlist  
CY 2014 to CY 2022

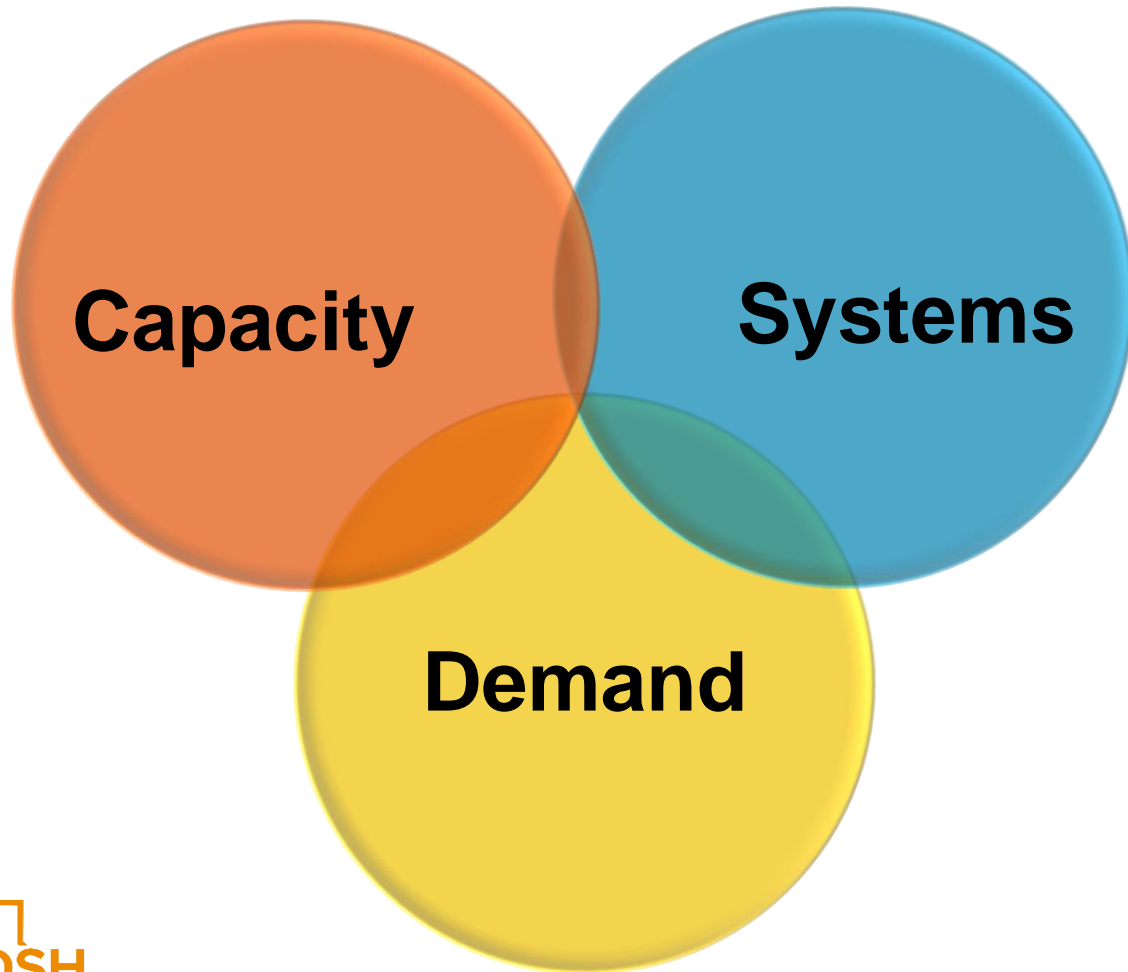


<sup>1</sup> Referral decreases in the 2020 calendar year represent the impact of the COVID-19 pandemic.

<sup>2</sup> IST Referrals exclude SH/JBCT Transfers and Court Returns.



# Department of State Hospitals Response to IST Growth



## Capacity

- State Hospital
- Jail Based Competency Treatment
- Community Based Restoration (CBR) (2018-19 FY)
- Community Inpatient Facilities (2021-22 FY)

## Systems

- Reduced ALOS
- Established Patient Management Unit
- Legislative Changes

## Demand

- Research to understand drivers of IST increases
- IST Diversion (2018-19 FY)

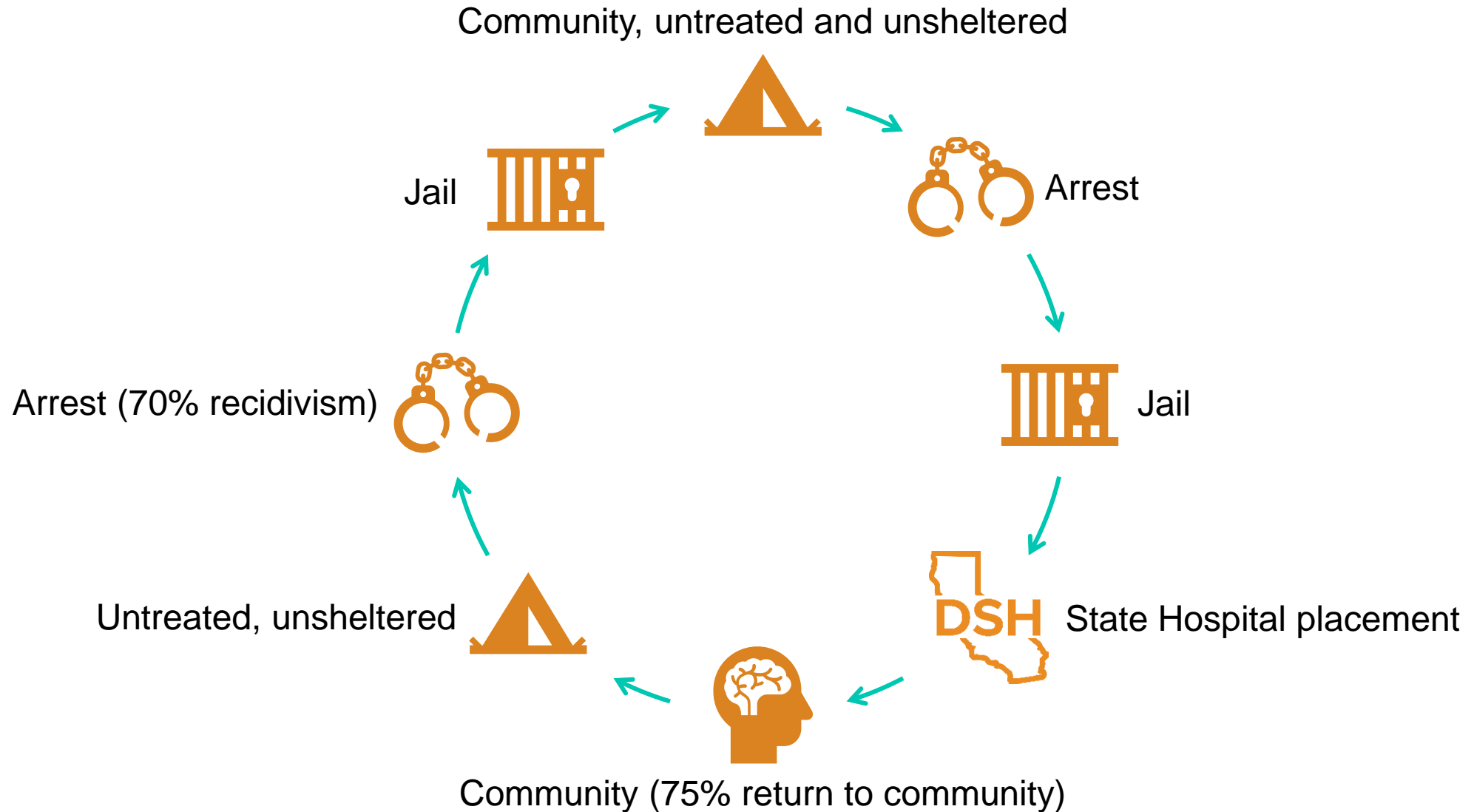
# Stiavetti v. Clendenin

---

- 2015 American Civil Liberties Union (ACLU) Lawsuit
- Regarding length of time IST defendants waiting for admission to DSH treatment
- Prior case, *Loveton*, from same court had ordered admission of IST defendants within 60 days (*this was the standard DSH was working toward*)
- Final ruling summer 2021: **commence substantive treatment** for Felony IST defendants **within 28 days** of commitment to DSH **by February 27, 2024**



# Policy Focus: Breaking the Cycle



# Prior IST Investments

## County & Provider Partnerships

---

- **Jail-Based Competency Treatment (JBCT)**
  - 24 existing programs with over 400 beds activated as of 2022-23
- **IST Diversion Pilot & Expansion (2018-19 & 2021-22)**
  - 29 total counties participating in pilot with 16 that expand further to serve Felony ISTs
- **IST Community Based Restoration**
  - LA County – total 515 beds between 2018-19 to 2021-22
  - New Counties – early stages
- **IST Community Inpatient Facilities (2021-22)**
  - Support community IST continuum of services and diversion stabilization
  - Partnership with existing facility/provider for up to 117 beds
  - Additional partnerships underway for new IMD infrastructure
- **CONREP 180-Bed Forensic Assertive Community Treatment (2021-22)**
  - 3 locations x 60 beds each: Sacramento, San Diego, Bay Area
  - Serves clients statewide
- **CONREP Continuum of Care**
  - 20-bed Northern CA IMD – activated in 2021
  - 30-bed Northern CA Adult Residential Facility – activated in Spring 2022
  - 78-bed Southern CA IMD – anticipated to activate in Summer 2023





# Prior Years IST Community Treatment Proposals

---

- **Community Care Collaborative Pilot (CCCP) – FY 2020-21**
  - 6-year pilot program with 3 counties. Incentive funding program to:
    - Reduce felony IST referrals to DSH
    - Build out a full and appropriate IST continuum of care in the community
    - Demonstrate effective strategies to treat and house high risk, high need population
  - Tiered incentive funding provided in accordance with progress made, and additional fiscal incentives as benchmarks were met
- **Community Care Demonstration Project (CCDP) – FY 2021-22**
  - Partnership with 3 or more counties to assume full responsibility for care and treatment of Felony IST population committed by their county with option to purchase state hospital bed day for those who require this level of care
  - Similar goals as CCCP, with ongoing funding and increased funding levels based on feedback received from prior CCCP proposal, including infrastructure
  - Initial 3-year demonstration period to collect outcome and fiscal data to evaluate effectiveness of programming and funding methodology



# 2022-23 IST Solutions Budget Package

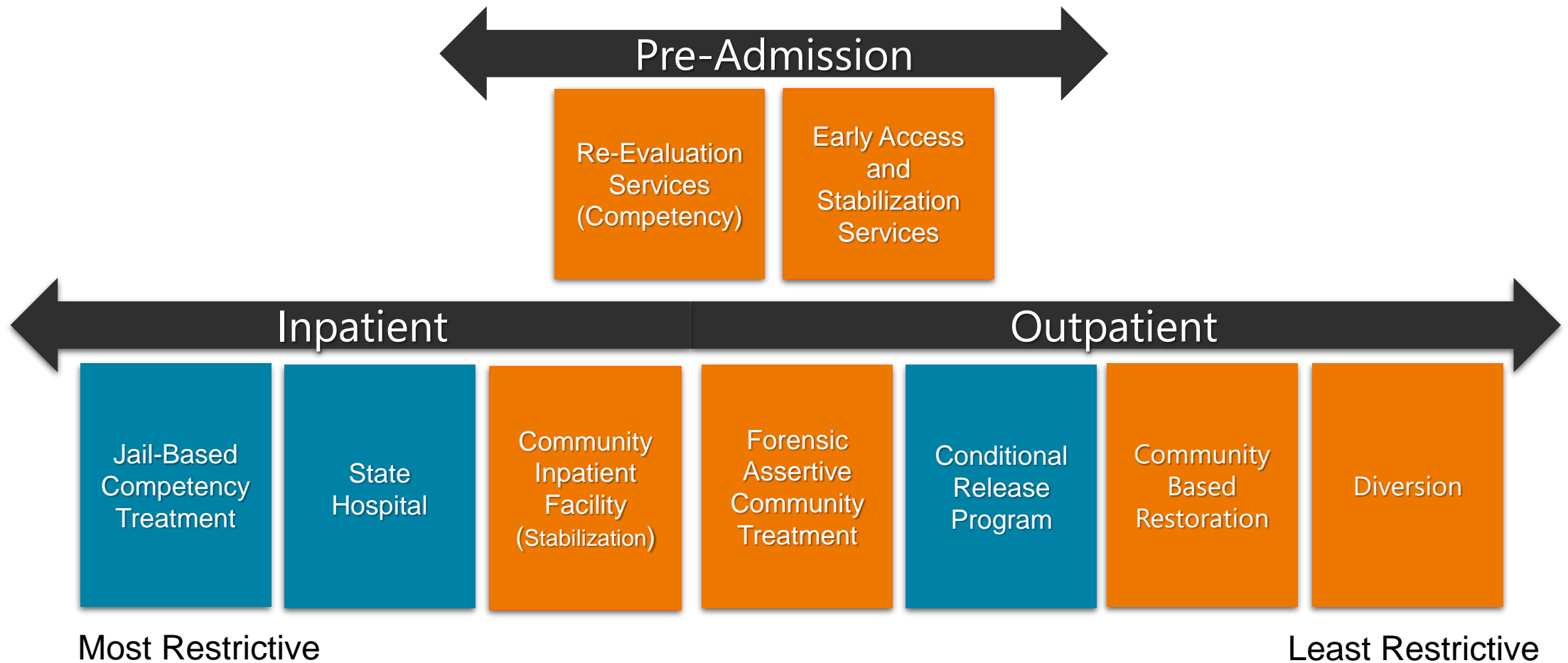
---

- Informed by the recommendations of the statewide IST Solutions Workgroup convened in fall 2021<sup>1</sup>
- Total funding authorized to support implementation of the various strategies and solutions
  - **\$535.5 million in 2022-23**
  - **Increases to \$638 million in 2025-26 and ongoing**
- Multiple legislative changes to IST statutes to support implementation

<sup>1</sup>For more information about the IST Solutions Workgroup visit: <https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/>



# Incompetent to Stand Trial Treatment Continuum



**Expansion of Treatment Continuum  
Across California Counties**

# **Felony IST Growth Cap Overview & Initial Implementation**

# Goals of IST Growth Cap

---

- Prevent unintended consequence of sizable investments into community-based restoration and diversion
- Encourage efforts at the county level to prevent the arrest or re-arrest of individuals with serious mental illness
- Encourage counties to participate in DSH-funded programs, with emphasis on diversion and community-based services.

# IST Growth Cap - Basic Framework

---

- Defined in Welfare and Institutions Code section 4336
- Establishes FY 2021-22 as baseline year for a county's total annual felony IST determinations
  - Any county with zero felony IST determinations, baseline set at one
- Annually thereafter a county may be charged fees if IST determinations in the year exceed the county's established baseline.
  - IST determination counts must be reconciled by September 30<sup>th</sup> for the prior FY
  - Fees charged based on rate for State Hospital treatment.
- Funds collected are returned to county for reinvestment in efforts to prevent arrest/rearrest of individuals with SMI.



# IST Growth Cap - Basic Framework

---

## Annual IST Determination Counts Exceeding 2021-22 & Fee Collection

- **First 4 years**
  - No charge if a county exceeds the baseline by up to 4 IST determinations.
  - Tiered rate applied for 5<sup>th</sup> to 9<sup>th</sup> IST determination over baseline (50% 5-7; 75% 8-9).
  - 10+ 100% of the penalty rate for any additional IST determination over baseline.
- **Year 5 and Beyond**
  - 150% of rate for the 3<sup>rd</sup> and subsequent IST determinations over baseline for counties not participating in IST community-based restoration and/or diversion.
  - 100% for over 3 determinations for counties with community-based restoration and/or diversion.
- County can select any local funding source to pay fees
- All fees collected will be returned to county must be reinvested in either
  - Pre or Post Booking Diversion targeting individuals likely to be found IST.
  - Re-entry services of individuals found IST, restored and directly released to community to prevent re-arrest.
- Counties must submit a plan for how funds will be utilized to receive their distribution and submit annual reports on the utilization of the funds.



# Initial Implementation Timeline

---

- December 2022
  - Issued Letter to Stakeholders regarding program, how it works, and associated timelines
  - Issued county Baseline IST determinations for 2021-22 and unreconciled data 1<sup>st</sup> Qtr of FY 2022-23 determinations
- February 2023
  - Issued 2<sup>nd</sup> Quarter progress report (initial methodology applied)
- Winter/Early Spring 2023
  - Multiple county inquires regarding IST determination methodology, requests for individualized data and consideration of a dispute process.
- **May 2023**
  - Began engaging in discussions with a coalition of county associations representing key IST stakeholders to consider modifications to IST Growth Cap staying within statutory requirements





# IST Growth Cap Updates

# What Has Changed?

---

## Three Primary Areas:

1. **Methodology** utilized for IST determination counts applied to the 2021-22 baseline year and subsequent fiscal years
2. **Rates** charged for the number of IST determinations that exceed the 2021-22 baseline
3. **Dispute process** was implemented for IST determination counts reported by DSH to each county

## Additionally:

Implementation of process to designate an authorized representative to receive individualized data for IST determinations for each county



# IST Determination Methodology

---

## Original Methodology:

Initial 2021-22 Baseline and First Two Quarters of 2022-23 reflected in December 2022 and February 2023 Departmental Letters

- 1) Felony IST referrals committed to DSH or a DSH-funded program
- 2) Based on the initiation date of referral to DSH within the respective fiscal year
  - Received date + Time to record data
- 3) Excluded:
  - Administrative errors
  - Duplicate records
  - Transfers between DSH programs



# IST Determination Methodology

---

## Updated Methodology:

- 1) Felony IST referrals committed to DSH or a DSH-funded program and based on the commitment date of the IST individual (date of commitment order to DSH or a DSH-funded program) within the respective fiscal year, and
- 2) Exclusion of any:
  - administrative errors,
  - duplicate records,
  - transfers between DSH programs
  - deaths (known to DSH)
  - program revocations
  - recommitments on the same charge
  - cancelled commitments
  - IST Re-Evaluations that resulted in PC 1372 competency finding
  - PC 1372 competency finding during EASS participation



# IST Determination Methodology

## Diversion Credit:

- Partial credit that will further reduce adjusted total of IST determinations
- Diversion credit will apply to counties who have placed IST individuals in a community setting through a Diversion or CBR Program
- Partial credit recognizes that both DSH and County have a role in treating IST individuals in a Diversion and CBR program, and that some individuals may be unsuccessful necessitating transfer to a DSH facility for continued treatment

## Assumptions:

- DSH will determine the statewide success rate for IST individuals admitted to a Diversion or CBR program during the prior 2-years. Current Diversion/CBR success rate: 60%. The success rate assumes the number of individuals who will successfully complete their program.
- The success rate is then applied rate applies to the Diversion/CBR admission count during the 2021-22 Baseline and 2022-23 fiscal years.
- The number derived from the success rate calculation is then reduced by 50%. This offset recognizes that DSH typically initiates treatment for IST individuals to support stabilization and safe transition to a lower level of care in the community through the Diversion or CBR program

## Example Calculation:

10 individuals were found IST and diverted within FY 2022-23

- 10 diverted ISTs multiplied by the statewide success rate for FY 2020-21
- $10 \times .60 \times 50\% = 3$
- Number is deducted from appropriate FY determination counts



# Charged Rates

---

## Initial Published Rate:

- Initially, DSH identified one rate to calculate fees applicable to excess IST determinations
- Based on the daily bed rate for treatment at a state hospital and the ALOS applicable for IST individuals treated in a state hospital
  - For FY 2022-23, pre-COVID 3-year ALOS applied
- This rate is considered the base rate for calculation of fees

## CHARGED RATE

FY 2022-23 Bed Rate: \$728 per day

FY 2016-17 through FY 2018-19 ALOS for IST Population: 155 days

FY 2022-23 Treatment Rate per IST Individual: **\$113,000**



# New Tiered Rate Structure

- Accounts for participation in a DSH-funded IST treatment program

## Rate Structure

Tier	Description	Rate <sup>1</sup>	Rate w/ EASS
1	County does not operate a DSH-funded program	\$ 113,000	\$ 102,000
2	County operates a CBR and/or Diversion Program	\$ 107,000	\$ 96,000
3	County operates a JBCT program	\$ 83,000	\$ 75,000
4	County operates a CBR and/or Diversion & a JBCT	\$ 77,000	\$ 69,000

## Rate Assumptions

IST Program	Cost Assumption	Value	ALOS	# of Days
State Hospital (SH)	2021-22 SH Daily Cost	\$728.00	3 yr. Avg. 2016-17 to 2018-19	155
JBCT	2021-22 JBCT Daily Cost	\$425.00	3 yr. Avg. 2016-17 to 2018-2020	71
CBR/ Diversion	2022-23 IST Solutions Budgeted Daily Rate	\$229.00	New IST Solutions budgeted assumption (one-half of 545 days, the anticipated average length of stay)	272.5



# Available Data & Designated Representatives

## Designated Representatives Authorized to Receive Individualized Data

- DSH will share individual level details of IST determination data with an authorized representative(s) of the county on a **quarterly basis**
- Assists in tracking the changing status of IST determination counts
- Each county designates one or more representatives to serve as a point of contact to receive the detailed data
- Designated representative(s) should be authorized to receive data in accordance with HIPAA

## Individualized Data Available

- The county representative(s) approved to receive confidential IST data will receive the following information via secure electronic transmission from DSH.
  1. Name of Patient
  2. CII #
  3. Gender
  4. Committing County
  5. Commitment Date on Record





# Dispute Process

## Dispute process for potential discrepancies in IST determinations applied to a county's growth cap

- Counties must receive report from DSH reflecting individualized data for each IST determination accounted for by DSH
- In the data report provided by DSH, identify each applicable record being disputed
  - Provide explanation outlining the reason(s) for dispute
  - Attach any supporting documentation
  - Attach a copy of the Commitment Order for each record being disputed
  - If the record being disputed is not referenced on the detailed IST determination, manually fill in the information on the IST determination report and include:
    1. Full Name of individual committed as IST on a felony charge being disputed, and any known aliases
    2. Criminal Identification & Information (CII) Number for each record being disputed
    3. Include supporting documentation and commitment order
- Submit to dispute to: [DSHISTGrowthCap@dsh.ca.gov](mailto:DSHISTGrowthCap@dsh.ca.gov)



# Dispute Process Timeline

---

- Initial year of implementation, two dispute windows will be offered: 1) 2021-22 baseline calculation determinations, and 2) for 2022-23 IST determinations
- In subsequent years, dispute window will be offered once per year

## Baseline IST Determinations Dispute Window

- From August 2023, through October 2023
- Counties have 90 days to submit a dispute regarding FY 2021-22 Baseline counts
- One-time extension may be granted for 30 additional days (November 30, 2023)

## Yearly FY Reconciled Determinations Dispute Window

- Reconciled reports released to the counties at the end of October annually
- 90-day window to submit a dispute to DSH (November 1 through January 31)
- 90-day window for DSH to review & respond
  - Beginning in FY 2024-25 and ongoing annually, the dispute window will be reduced to 60 days for both filing and response, and invoices will be sent out 30 days following the dispute.



# A Glimpse Ahead

---

- September 30, 2023: Deadline for DSH to reconcile FY 2022-23 IST determination data
- End of October 2023: Release of reconciled data report to counties. For counties who have a designated representative on file, individual detailed data.
- November 2023: FY 2022-23 IST determination dispute process window open
- Release of spending plan template required from counties for distribution of funds to counties (development in process)
- Training and technical assistance offerings to counties on upstream strategies to reduce IST commitments, expenditure plan development, and annual reporting requirements.

# Collaborative Community Stakeholder Workgroup Grants

---

- Included in \$5.8M in IST Solutions Budget Package
- \$100,000 grant annually to a county to convene stakeholders (e.g. county behavioral health, courts, public defender, district attorney, Sheriff, probation)
- Workgroups to identify strategies and seek solutions for reducing criminalization of individuals with serious mental illnesses in their communities and may include:
  - implementation of CARE Court, pre-arrest diversion programs, and reentry services for individuals with a serious mental illness.
  - planning efforts related to implementing new and/or expanding CBR and Diversion programs aimed at serving the FIST population.





# Thank you!

If you have any questions or require additional information, please send inquiries

[DSHISTGrowthCap@DSH.CA.GOV](mailto:DSHISTGrowthCap@DSH.CA.GOV)

The Growth Cap Letter and Attachments can be found at the following link under “Growth Cap”:

[California Department of State Hospitals - Department Letters](#)



DSH