Administration of Justice Policy Committee Meeting
CSAC Legislative Conference
Wednesday, April 20, 2022 — 2:15pm – 3:45pm
In-person: SAFE Credit Union Convention Center
Sacramento County, California

Supervisor Kelly Long, Ventura County, Chair
Supervisor Susan Ellenberg, Santa Clara County, Vice Chair
Supervisor Oscar Villegas, Yolo County, Vice Chair

2:15 p.m. I. **Welcome and Introductions**
Supervisor Kelly Long, Ventura County, Chair
Supervisor Susan Ellenberg, Santa Clara County, Vice Chair
Supervisor Oscar Villegas, Yolo County, Vice Chair

2:20 p.m. **II. Felony Incompetent to Stand Trial (IST) Discussion**
Dr. Katherine Warburton, Medical Director/Deputy Director of Clinical Operations, Department of State Hospitals (DSH)

Sheriff Brandon Barnes, Sutter County

Christy Mulkerin, M.D., Healthcare Consultant, Former Chief Medical Officer, San Luis Obispo County Jail

Judge Larry Brown, Mental Health Court, Sacramento County

Michelle Cabrera, Executive Director, California Behavioral Health Directors Association (CBHDA)

3:10 p.m. **III. Questions and Answers**

3:30 p.m. **V. Public Safety Legislative Update**
Ryan Morimune, Legislative Representative
Stanicia Boatner, Legislative Analyst

VI. AB 1869 Reporting Requirements
Ryan Morimune, Legislative Representative
Stanicia Boatner, Legislative Analyst

3:45 p.m. **VII. Adjournment**

ATTACHMENTS

Felony Incompetent to Stand Trial Panel

Attachment One……Memo on Felony Incompetent to Stand Trial

Attachment Two……DSH Incompetent to Stand Trial Early Stabilization & Community Care Coordination: Early Access to Treatment and Medication Stabilization Trailer Bill Language Fact Sheet

Attachment Three……DSH Early Stabilization & Community Care Coordination – Care Coordination and Waitlist Management Trailer Bill Language Fact Sheet

Attachment Four……DSH Expand Diversion & Community Based Restoration Capacity Trailer Bill Language Fact Sheet

Attachment Five……DSH Pilot Independent Evaluation Panel for the Forensic Conditional Release Program (CONREP) Trailer Bill Language Fact Sheet

Attachment Six……DSH Felony IST Growth Cap Trailer Bill Language Fact Sheet

Attachment Seven……CSAC/UCC/RCRC DSH Budget Proposal Letter

Administration of Justice 2022 Public Safety Legislative Update

Attachment Eight……Reporting Requirements for AB 1869 Backfill

Attachment One

Memo on Felony Incompetent to Stand Trial

April 5, 2022

To: Administration of Justice Policy (AOJ) Committee

From: Ryan Morimune, AOJ Legislative Representative
Stanicia Boatner, AOJ Legislative Analyst

Re: Felony Incompetent to Stand Trial

The Department of State Hospitals (DSH) continues to experience a growing number of incompetent to stand trial (IST) commitments, who are referred from trial courts and are awaiting admission to the state hospital system. This increase has been further exacerbated by the ongoing COVID-19 pandemic, necessary infection control measures put in place by DSH, and the June 2021 *Stiavetti v. Clendenin* appellate court order, which requires DSH to provide substantive competency restoration services for all ISTs within 28 days receipt of the commitment packet from the court. The patient population is expected to reach 8,064 by the end of 2022-23.

In the fall of 2021, DSH convened an IST Workgroup to identify actionable solutions to address the increasing number of individuals with serious mental illness who are deemed felony IST. The Governor's January Budget proposal includes statutory language authorizing the Department of Finance to augment DSH's budget by an additional $350 million General Fund, building on the $175 million already available in 2022-23 for the purposes of implementing solutions identified by the Workgroup.

Informed by the deliberations of the Workgroup, the Governor's January Budget proposal reflects spending of $93 million General Fund in 2021-22, $571 million General Fund in 2022-23 and ongoing funds that provide for:

- Early Stabilization and Community Care Coordination to provide immediate solutions to support access to treatment for the nearly 1,700 individuals currently found IST on felony charges and waiting in jail, and to reduce the flow of new referrals. This includes funding for:
    - Early access to medication stabilization teams to encourage treatment in jail settings.
    - Statewide funding for medication support.
    - DSH case management teams to coordinate IST care with counties and other community providers.
- Expand Diversion and Community-Based Restoration Capacity to increase treatment alternatives for IST individuals by investing in the community infrastructure required to support the population.
    - Infrastructure to increase the number of residential beds in the community dedicated to DSH Diversion and Community-Based Restoration programs.
    - Increased funding for counties to expand DSH Diversion and Community-Based Restoration.
    - Supporting county partnerships for entities impacted by felony IST community placements.
    - Workforce development support for counties and community providers.

In addition to the investments outlined above, the Administration is also proposing the creation of a growth cap on IST referrals that will include a county penalty payment methodology if the cap is exceeded. The goal of the proposed cap is to incentivize local community solutions for those found to be IST, as well as grow local programs to prevent individuals with serious mental illness from entering the criminal justice system in the first place.

The Administration of Justice (AOJ) Policy Committee continues to monitor and engage stakeholders on the issue of the growing Felony Incompetent to Stand Trial (IST) population and the Department of State Hospitals' felony IST waitlist. The Committee will feature a panel focused on the IST solutions package, proposed in the Governor's January Budget, and the current challenges and impacts the proposal may have on counties across our state.

Please contact Ryan Morimune (rmorimune@counties.org) or Stanicia Boatner (sboatner@counties.org) if you have any questions about this item.

Attachment Two

DSH Incompetent to Stand Trial Early Stabilization & Community Care Coordination: Early Access to Treatment and Medication Stabilization Trailer Bill Language Fact Sheet

Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)

FACT SHEET

Issue Title: Incompetent to Stand Trial Early Stabilization & Community Care Coordination: *Early Access to Treatment and Medication Stabilization*

The purpose of this TBL is to provide early access to medication stabilization for defendants found incompetent to stand trial (IST), by clarifying the expectations of a court appointed psychiatrist or psychologist in informing the court whether an individual may need psychiatric medications to stabilize their mental health conditions in order to be restored to competency. This TBL removes barriers to providing necessary medications for individuals found IST by clarifying that jails may provide involuntary medications to ISTs who are pending transfer to a treatment program and permits the medication orders to transfer with the patient between treatment settings and other placements.

Background and History:

Currently, Penal Code section 1369 is ambiguous as to the expectations of a court appointed psychologists and psychiatrists in assessing and informing the court on involuntary medication needs of individuals being evaluated for competency. Such ambiguity allows psychologists, who conduct the majority of these competency evaluations, to avoid essential questions related to capacity to consent to medications, whether the individual is diagnosed with a psychotic disorder that may benefit from medication treatment, and whether an individual is a danger to others. These questions are well within the scope of a psychologist's practice and are essential considerations for the court. This ambiguity creates uncertainty with courts on the ability to utilize psychologist's evaluation as a basis of information on which to issue an involuntary medication order. When medication questions are not addressed in evaluations, the court cannot consider these important issues and initiate involuntary medication orders, when needed.

Criteria specifically related to involuntary medication for the purpose of restoring a defendant to trial competency for serious criminal charges include specific questions that are best addressed by a prescribing practitioner. These questions are those outlined in the United States Supreme Court Decision United States v. Sell United States Supreme Court 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003) and codified in Penal Code section 1370, subdivision (a)(2)(B)(i)(III). The current statute combines these Sell Criteria with questions related to capacity and danger, which is confusing in the context of the evaluation by a psychiatrist compared to a psychologist.

Currently, Penal Code section 1369.1 allows a jail to be designated as a treatment facility in order to provide medications involuntarily if approved by the local county

board of supervisors. Since the time 1369.1 was enacted, Penal Code section 2603 took effect to allow involuntary treatment of individuals in local jails. The combination of the two like statues created this ambiguity on which process to follow when seeking involuntary treatment. Repealing Penal Code section 1369.1 eliminates this ambiguity.

Currently, Penal Code section 1370 does not permit the committing court to issue an involuntary medication order to include the jail while a defendant awaits admission to a DSH facility, or other treatment facility.

Currently, Penal Code section 2603 does not allow any order for involuntary medication obtained by the Sheriff to transfer with the defendant when they are admitted by DSH or any other treatment provider. DSH or the treatment provider must petition for an involuntary medication order after the individual is admitted, if there is no such order issued by the court at commitment pursuant to Penal Code section 1370.

Justification for the Change:

The changes will clarify expectations for evaluators and ensure they address medication relevant questions to the extent possible. This will provide courts more clinical evaluations to consider medication orders which are essential treatment tools. The changes will also allow critical treatment to begin immediately upon commitment by the courts if involuntary treatment is also ordered by the court.

DSH has found that essential treatment can be delayed when an involuntary medication order is not considered and executed. In one study examining records of IST patients on the waitlist, it found that almost 60% of those without an involuntary medication order, or about 17% of patients admitted, could have benefitted from one given their lack of compliance with medications in the jail setting. This is because they did not comply with needed medication treatment while awaiting transfer from the local jail to a DSH facility. This could have translated to over 319 patients (defendants) in 2021 for DSH hospital admissions alone.

Delayed treatment can lead to harm and prolong adverse consequences to an individual's physical or mental health, increase the risk of dangerous behavior towards others, prolong the time needed for restoration and prevent an individual from being able to be treated in a least restrictive treatment environment or being considered for a diversion program. When needed medication is administered quickly during acute illness, recovery can be expedited. Medication orders benefit the patient by reducing the need for intensive and restrictive treatment and facilitating return to court and a speedy trial or placement in a diversion or community-based competency restoration program. In some cases, commencing treatment prior to admission to a DSH facility may restore an individual's competence to stand trial before a transfer to the DSH facility would be required.

This TBL would amend Penal Code Sections 13691.1, 1370 and 2603 as summarized below:

- Clarify expectations for psychologist and psychiatrist evaluators permit medication orders related to lack of capacity and for dangerousness, if deemed appropriate by a prescriber.
- The change to eliminate Penal Code section 1369.1 clarifies that jails can seek involuntary medication orders pursuant to Penal Code section 2603. This streamlines the process, removes ambiguity, and clarifies which process to use to seek an involuntary medication order for medically appropriate treatment.
- The change to Penal Code section 1370 will permit the committing court to issue an involuntary medication order to include the jail while a defendant awaits admission to a DSH facility, or other treatment facility. This will provide an avenue for early treatment while the defendant awaits transfer to DSH.
- Changes to Penal Code section 2603 allow any order for involuntary treatment of an individual housed in the jail obtained by the Sheriff to transfer over to DSH after admission. This permits continuity or care across setting and reduces the potential for decompensation due to lack of a valid order.

Summary of Arguments in Support:

Appropriate care for defendants can be delayed due to a lack of clear authority and process regarding involuntary medication orders. Patients in the acute stages of an illness often do not recognize they need medication, and they lack capacity to make decisions regarding medications. They also can present a danger to themselves or others and require medication for those reasons. The language regarding scope of practice for medication consideration is confusing. Increased clarity is likely to improve the necessary consideration of these factors. Currently, medication orders cannot transfer across settings, resulting in needless disruption in care. The proposed changes will facilitate access to medication and continuity of care by the following means:

- Ensure medication relevant questions are considered during IST evaluations by clarifying expectations and clarifying the role for psychologist evaluators.
- Encourage court consideration of medication orders to promote early access to treatment for patients in acute stages of illness, potentially reducing restoration time and potential harm.
- Clarify that specific medication related questions are best addressed by prescribing practitioners. These changes permit medically necessary treatment to be initiated and allows an individual to receive that treatment at any point while in custody. This includes during competency proceedings and while awaiting admission to a treatment program or facility.
- Ensure continuity of care by permitting transfer of medication orders.

Attachment Three

DSH Early Stabilization & Community Care Coordination – Care Coordination and Waitlist Management Trailer Bill Language Fact Sheet

Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)

FACT SHEET

Issue Title: Early Stabilization & Community Care Coordination - *Care Coordination and Waitlist Management*

The purpose of this TBL is to clarify the records in the commitment packet that are necessary for preadmission evaluation and admission, as well as refine requirements for the Re-Evaluation Services for Felony Incompetent to Stand Trial (IST) Patients program. This program was implemented in July 2021 to help address the growing list of IST patients awaiting placement to a Department of State Hospitals (DSH) facility for competency restoration. This TBL would eliminate the 60-day threshold to initiate re-evaluations and clarify the requirements for county jails regarding DSH receipt of IST defendant information.

Background and History:
Beginning in fiscal year (FY) 2012-13, DSH began to experience an increase in the number of IST defendants committed and referred to the department which, over the subsequent years, has continued to grow and outpace the number of new beds, programs and process efficiencies implemented by DSH in response to this growing population. As of January 2022, the number of IST defendants pending placement to a DSH treatment program is over 1,700. While the high number of individuals pending placement can be partially attributed to protective measures implemented by DSH in response to COVID-19, the ISTs pending placement to a DSH program prior to COVID-19 was over 800.

Recently, new timelines for admission were ordered by the Superior Court and DSH must comply with a 28-day timeline to substantive treatment by early 2024, with the first phase-in milestone of 60 days by August 27, 2022. Maximizing efficiency in the preadmission process is one critical piece in meeting this order. Currently, DSH's Patient Management Unit expends significant effort and resources in collecting documents that are statutorily required and detailing the needs of DSH with the committing county when there are challenges in receiving the necessary records.

In July 2021, DSH implemented the Re-Evaluation Services program. DSH recognized the effectiveness of conducting re-evaluation when observing outcomes of the IST Re-Evaluation pilot program. The program, initiated in the early stages of the COVID-19 pandemic, provided assessment and medication consultation regarding patients whose transfers had been halted due to the pandemic. Early indicators showed that approximately 30% of patients evaluated were competent. As such, a substantial number of patients could be removed

from the list and returned to court. Data from the statutorily authorized program (WIC 4335.2) collected from its inception in July 2021 through the end of December 2021 mirror that result. Over 30% have been found by a DSH evaluator to be competent or as having no substantial likelihood of restoration and subsequently that finding was approved by a court. Thus, nearly one third of those evaluated could be returned to court without admission to a DSH IST treatment program. This demonstrates that the program is an effective and efficient way to expedite the Defendant returning to court. The program also considers the need for medication orders and alternative pathways for restoration, which could benefit all patients, not just those who have been committed to DSH for more than 60 days waiting admission. Regarding collateral contacts, DSH has found that county staff are reluctant to discuss the defendant's behavior, mental state, and treatment with DSH evaluators due to medical-legal privacy concerns.

Justification for the Change:
Through this TBL, language would be amended and added in PC Section 1370 to clarify the various documents that comprise the commitment packet.

- Add Section 1370 (3)(C)(i) to request amended credit computations or statements in the event of a court rejecting DSH's 1372 certification, as well as the court order or minute order for the rejection.
- Clarify Section 1370 (3)(D) to include jail classification records as part of the existing requirement for criminal history information.
- Clarify Section 1370 (3)(I) to include jail mental health records as part of the existing requirement for medical records.

Without this clarification, referrals are sent to DSH without proper documentation to make expedient placements in an appropriate setting; time and resources are spent in collecting and collating the items from the intent of the statute rather than offering clear statutory expectations to committing counties at the time of referral submission. DSH has found obtaining classification records and jail mental health records to be particularly challenging. Though the documents are often provided, in many cases multiple requests over a period of weeks must be made prior to receipt, greatly impacting processing efficiency.

Additionally, DSH is seeking to eliminate the 60-day post-IST commitment order time frame for re-evaluation. Many patients could immediately benefit from medication, or an alternative, less restrictive and more appropriate placement recommendation made by this program. Expanded access to those with less than 60 days on the list is warranted. Patients with substance induced psychotic disorders and patients who are treated with medication in jail often regain competency within weeks and eliminating the 60-day requirement would expedite assessment for access back to court and for other programs from which patients may benefit.

This proposal also includes requirements for county jails to provide records and receive collateral information from jail staff. Including statutory language to require collateral consultation will eliminate jail staff concerns regarding medical privacy violations from these consultations. Access to collateral information will improve the reliability and accuracy of the evaluations by filling potential gaps in information and addressing information not documented in medical records and custody reports.

Summary of Arguments in Support:

Clarification of Commitment Packet Records

- The records that comprise a commitment packet are necessary to ensure the health and safety of IST defendants admitted to facilities for treatment, as well as current resident patients and staff at DSH facilities.
- These documents provide the essential information to allow DSH staff to properly account and report to the committing court at the appropriate times, with the appropriate material, as defined in the law or further ordered by the Court.
- When documents are not received at the time of the initial referral submission, additional time and resources are spent in acquiring the critical records. This creates risk for inefficiency in the preadmission process when each day is critical in meeting court-imposed timelines to treatment.
- With improved clarity in statute itself, DSH expects improved compliance with initial submission, and consequently more efficient packet processing.

IST Re-Evaluation Services Program

A significant percentage of defendants deemed IST on the DSH waitlist (over 30 percent) have been found competent through current re-evaluation efforts.

- Others would benefit from a medication order (approximately 17%) or could benefit from an alternative treatment and placement pathway.
- Expanding access to the re-evaluation program to all patients on the waitlist would provide all patients access to these benefits, such as expedited assessments, speedy return to court, or less restrictive, more appropriate treatment interventions.
- DSH anticipates that expanding access could substantially reduce the DSH waitlist, not only by identifying competent defendants on the list, but also by accelerating access to needed treatment (medications) and identifying appropriate alternatives to inpatient hospitalization.
- Eliminating the 60-day post commitment requirement will ensure the Re-Evaluation Services program can continue its work once the waitlist has been reduced.

Requiring collateral consultation and information enhances evaluation accuracy. It also assures jail medical and custody staff consultation is legally permissible.

Attachment Four

DSH Expand Diversion & Community Based Restoration Capacity Trailer Bill Language Fact Sheet

Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)

FACT SHEET

Issue Title: Expand Diversion and Community Based Restoration Capacity

The purpose of this TBL is to address the growing number of individuals being found incompetent to stand trial (IST) on felony charges and awaiting placement to a Department of State Hospitals (DSH) facility for competency restoration and to encourage placement of individuals in least restrictive options (community-based restoration programs and diversion) when clinically appropriate, safe to do so, and programs are available. Specifically, this TBL amends the current placement presumption of an inpatient treatment setting for individuals determined to be IST to instead presume that persons deemed IST should be placed in an outpatient or community treatment setting unless otherwise indicated. Additionally, this language clarifies that only individuals who have been found IST are eligible for placement in DSH funded IST diversion program and removes eligibility for individuals who are likely to be found IST. This TBL also clarifies diversion data that counties operating DSH funded IST diversion programs must submit to DSH.

Background and History:

Over the last decade, the State of California has seen significant year-over-year growth in the number of individuals charged with a felony offense who are IST committed to DSH for competency restoration services. The State of California has responded to the substantial growth in the felony IST population through multiple investments to increase DSH's capacity to serve these individuals with serious mental illness. However, the growth in referrals of felony IST patients has exceeded DSH's capacity and outpaced other efforts made in response to this growth, resulting in an increasing waitlist and wait times to admission.

In many cases, an insufficient continuum of community-based specialty mental health services has led to an increase of under or untreated individuals with serious mental health conditions who end up cycling in and out of homelessness and the justice system. When individuals are stabilized and supported by appropriate treatment and services in the community, they are less likely to become homeless and justice involved.

The 2022-23 budget proposes a sizable investment in expanding community-based treatment and diversion options for individuals with serious mental illnesses who have been found IST on felony charges. With this investment, approximately 5,000 beds will be made available in community-based treatment and diversion programs.

Currently, Penal Code 1370 prioritizes placement for ISTs in inpatient settings and does not require individuals to be considered for community-based treatment programs.

Justification for the Change:

This TBL is necessary to ensure that individuals found IST are placed in the least-restrictive setting and that the investments made for this population are correctly utilized by county partners for treatment of the felony IST population. DSH estimates that 60-70% of felony IST patients do not require the level-of-care provided in a state hospital or jail-based treatment bed; the changes proposed in this TBL package will establish that the least-restrictive setting is always considered for each defendant. This TBL also clarifies data collection requirements to assure county partners that the data elements they are required to submit to DSH are clearly articulated in statute and allowed under the law.

This TBL would amend the applicable Welfare and Institutions Code (WIC) Section 4361 and Penal Code (PC) Section 1370 as follows:

- Beginning July 1, 2023, defendants shall first be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if one exists and is available, unless a court determines treatment at a state hospital is required.
- Amend the eligibility criteria for state-funded diversion programs so that individuals who have the potential to be found incompetent to stand trial on felony charges are no longer eligible for the program.
- Amend clinical language to reflect an updated list of mental disorders that participants may be diagnosed with when being found incompetent to stand trial per the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.
- Require programs to provide additional identifying information for each individual participating in programs, whether they complete diversion or not.
- Remove the requirement for participating counties to match a percentage of funding towards the total cost of diversion and administrative costs associated with development and evaluation activities.
- If the defendant is committed directly to a county program in lieu of commitment to the Department, the counties shall provide the minute order from the court documenting the IST finding on a felony charge and the original evaluation associated with the IST finding.
- Allow all county contracts that were executed prior to these proposed statutory changes to continue with all of the original parameters of the program, until those contracts expire.

Summary of Arguments in Support:

DSH estimates that 60-70% of IST commitments are eligible for services each year in a community-based program. Currently, the majority of these individuals are committed to DSH for treatment in a state hospital or jail-based competency treatment program without any consideration of whether they may be eligible for a diversion program. The 2022-23 budget proposes sizeable investments to expand community-based treatment and diversion options for ISTs. This TBL is necessary to ensure that individuals deemed IST are first considered for treatment in their least restrictive setting before being admitted to a state hospital or jail-based competency treatment program for a total of approximately 3,000 felony ISTs based on the current monthly average referral rate of 455 ISTs. This TBL would:

- Increase the number of IST defendants ordered into outpatient and other community treatment programs by the Courts.
- Increase the number of IST patients treated in the least-restrictive setting appropriate to their clinical needs and violence risk.
- Increase diversion opportunities and community-based treatment options for ISTs.
- Prioritize state hospital beds for IST patients in need of the highest levels of care.

Attachment Five

DSH Pilot Independent Evaluation Panel for the Forensic Conditional Release Program (CONREP) Trailer Bill Language Fact Sheet

Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)

FACT SHEET

Issue Title: Pilot Independent Evaluation Panel for the Forensic Conditional Release Program (CONREP)

The purpose of this TBL is to support systemic improvements to the Department's CONREP program. The Department of State Hospitals (DSH) is proposing to establish a pilot program for a statewide independent placement panel for the purpose of evaluation, consultation, and review of CONREP placements. This panel will help to reduce current barriers preventing patient placement into CONREP, support continuous improvement of discharge processes across all DSH patient commitments, ensure timely release of discharge-ready patients from DSH, and increase overall efficiency of state hospital beds.

Background and History:

CONREP is DSH's statewide system of community-based services for specified court-ordered forensic individuals. The goal of CONREP is to promote greater public protection in California's communities via an effective and standardized community outpatient treatment system. The two primary legal commitments served in CONREP include:

- Not Guilty by Reason of Insanity (NGI) (Penal Code (PC) 1026)
- Offender with a Mental Health Disorder (OMD) (both PC 2964 parolees who have served a prison sentence and PC 2972 parolees who are civilly committed for at least one year after their parole period ends)

Additionally, CONREP serves a small number of Felony Incompetent to Stand Trial (IST) (PC 1370) patients who have been court-approved for outpatient placement in lieu of state hospital placement.

Under the authority of PC 1605(a), DSH designates the Community Program Director (CPD) for county or regional CONREP programs across the state. The CPD serves as the primary outpatient treatment supervisor for the county or region they are assigned to. The CPD can designate functions and responsibilities to other clinical and administrative staff; however, the CPD remains responsible to provide program and staff oversight to ensure public safety and patient welfare. Furthermore, as specified in PC 1600-1615, the CPD, with the Court's approval, assesses state hospital patients' suitability for placement in the CONREP outpatient program that they oversee and provides an opinion to the court.

Justification for the Change:

Over the past 15 years, DSH has experienced a decline in its CONREP outpatient census while its inpatient census has significantly increased over the same time-period. While a lack of available and affordable housing and increased operational costs have contributed to the challenges in placing state hospital patients in CONREP, structural barriers to a standardized outpatient referral and evaluation process and separating the role of the treatment provider from the evaluator are at the root of the problem. Establishing an independent evaluation panel will allow CONREP the capacity to address these barriers in

addition to building out services and supports to promote successful community reintegration while the independent evaluation panel focuses on CONREP placement determinations. The TBL will establish a pilot program for an independent panel of forensic professionals that will assume the placement determination role for services described in Welfare and Institutions Code Section 4360. It would:

- Establish an independent statewide evaluation panel consisting of a multi-disciplinary team of both contracted and civil service forensic professionals.
    - The panel may work independently or in conjunction with the CONREP CPD to provide recommendation reports to the court for individuals referred to CONREP for treatment.
    - The panel will be expected to understand all available outpatient and inpatient treatment programs available for DSH forensic commitments.
- Establish authority for DSH to determine whether the panel or the CPD is responsible for particular case reviews and ultimate determinations and recommendations.
- If approved, this pilot program will remain in effect until June 30, 2026.
- Require DSH to conduct an evaluation of the effectiveness of the pilot to determine extending the use of the statewide independent placement panel after June 30, 2026.
- Allows DSH the ability to implement, interpret, or make specific any of this section by means of a department letter or other similar instruction, as necessary.
- Contracts awarded to this chapter are exempt from Public Contract Code and State Administrative Manual requirements.

This TBL would also amend applicable PC Sections 1602, 1603, 1604, 1026, and 1026.2.

Summary of Arguments in Support:
The panel will improve the assessment process to increase the number of transitions from the state hospitals to the community for patients who are committed to DSH as NGI or as an OMD. DSH anticipates that the proposed TBL would:

- Increase the overall utilization of CONREP.
- Increase the number of discharges from a state hospital, thereby making beds available for other individuals on DSH's waitlist.
- Increase the number of patients treated in the least-restrictive setting appropriate to their clinical needs.
- Implements a uniform approach to release determinations statewide.

Attachment Six

DSH Felony IST Growth Cap Trailer Bill Language Fact Sheet

Department of State Hospitals
Proposed Trailer Bill Legislation (TBL)

FACT SHEET

Issue Title: Felony IST Growth Cap
The purpose of this TBL is to implement a growth cap on Incompetent to Stand Trial (IST) referrals that will include a county penalty payment methodology if the growth cap is exceeded.

Background and History:
Criminal defendants who are unable to understand criminal proceedings or assist counsel in their defense are determined by a court to be IST. If these individuals are charged with a felony, they can be committed to the Department of State Hospitals (DSH) to provide treatment services with the goal of restoring their competency and enabling them to return to court to resume their criminal proceedings.

Beginning in fiscal year (FY) 2012-13, DSH began to experience an increase in the number of IST defendants committed and referred to the department which, over the subsequent years, has continued to grow and outpace the number of new beds, programs and process efficiencies implemented by DSH in response to this growing population. As of January 2022, the number of IST defendants pending placement to a DSH treatment program was over 1700. While the high number of individuals pending placement can be partially attributed to protective measures implemented by DSH in response to COVID-19, the ISTs pending placement to a DSH program prior to COVID-19 was over 800.

The growing number of county IST commitments is largely driven by insufficient appropriate community treatment services which leads to the increased involvement in the justice system of under or untreated individuals with serious mental illness. To ensure that the expansion of DSH funded community-based care does not create unintended incentives that drive additional IST commitments, the state will implement a growth cap that will include a penalty payment if the growth cap is exceeded.

Justification for the Change:
This TBL would address the growing number of felony IST commitments by adding Welfare and Institutions Code section 4336 to establish a growth cap on the number of IST determinations and a penalty payment methodology. DSH proposes to establish a baseline to set each county's cap at the total number of felony IST determinations that are made in the current fiscal year (FY 2021-22). If counties exceed their baseline number, they will be charged a penalty payment for the total number of individuals determined IST on felony charges above their established baseline. The methodology will use a scaled approach based on the number of IST determinations that exceed the baseline by a given county. The total penalty payment will be based on DSH's published per individual rate for state hospital treatment. The growth cap and resulting penalty payment methodology will apply to all counties, regardless of whether they contract with

the department for community-based programming. Payments will be calculated a year in arrears, based on the prior year's actual number of IST determinations.

The proposed language provides counties flexibility in determining which local funding source they may use to make penalty payments, including the option to pay from funds they have received from DSH for serving individuals determined to be IST. Payments will be held in a new Mental Health Diversion Fund and the department will allocate those funds to counties to support additional county infrastructure and programming to reduce felony IST determinations including, but not limited to, pre-booking and pre-arrest diversion programs, as well as re-entry services and supports for ISTs who have been restored to competency and are released from jail back into the county. Counties that receive this funding will be required to submit an annual report to DSH identifying the use of these funds in the prior fiscal year.

Summary of Arguments in Support:
Referral rates from the most recent decade suggest that counties will continue to increase referrals of ISTs to DSH. This proposal will incentivize local community solutions for those with serious mental illness that have been found incompetent to stand trial, as well as the growth of programs providing local care which can prevent the felony arrest of individuals with serious mental illness. To reduce the cycle of criminalization of serious mental illness, community-based treatment must be more available.

Attachment Seven

CSAC/UCC/RCRC DSH Budget Proposal Letter

California State Association of Counties®

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February 9, 2022

Honorable Susan Talamantes Eggman
Chair, Senate Budget and Fiscal Review Subcommittee No. 3 on Health and Human Services
1020 N Street, Room 502
Sacramento, CA 95814

RE: Incompetent to Stand Trial Proposals in January Budget:
Support Extensive Efforts to Develop Community Capacity;
Oppose County Cap Proposal;
Oppose Conservatee Release "Trigger;"
Oppose Current Redirection of 1991 Realignment Funding for Tardy Retrieval of Patients

Dear Chair Eggman:

The California State Association of Counties (CSAC), representing the county boards of supervisors in all 58 counties, is appreciative of the opportunity to provide our perspective and concerns related to the proposals to reduce the state treatment waitlist for felony incompetent to stand trial (IST) individuals as put forth by the Department of State Hospitals (DSH) in both the current and upcoming budget years.

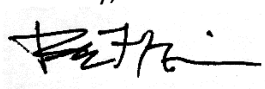
We commend DSH Director, Stephanie Clendenin, and her staff for their efforts to increase state-local collaboration and community capacity for individuals charged with a felony and deemed IST. The Department has undertaken a series of steps to expand in-jail restoration programs and build much-needed capacity for safe IST placements, and the Legislature has provided significant fiscal support for such efforts. Additionally, counties support the Department's focus on upstream prevention and diversion of individuals living with behavioral health issues from the criminal justice system altogether. To that end, CSAC supports the proposals for Stabilization and Early Access to Treatment; Care Coordination and Waitlist Management; Housing Augmentation for Current Diversion Contracts; Community Based Restoration and Diversion Beds; and Increased Conditional Release Program Placements included in the January Budget.

Despite these efforts and investments, the waitlist and overall lack of access to treatment for those declared IST remains a troublesome and unconstitutional dilemma. CSAC and the County Behavioral Health Directors, along with other county partners, have engaged with DSH and the California Health and Human Services Agency since last summer to collaborate on possible solutions. While the January Budget proposals incorporate some feedback from counties, it also includes punitive measures against counties in an effort to curb referrals for felony IST treatment with the establishment of a growth cap and a county cost sharing methodology if the cap is exceeded. This builds on top of policy changes from last year, which are perceived locally as a threat to release all county-placed conservatees from DSH facilities and to close new admissions of county conservatees altogether, if county referrals for IST placements are not reduced by an unspecified amount. This "stick" includes both Lanterman-Petris-Short conservatees and Murphy conservatees, both of which often require complex medical and psychiatric care and who have been involved with the criminal justice system.

Lastly, with the approval of last year's budget (AB 133), DSH has the authority to divert a county's 1991 mental health realignment funding if a sheriff fails to retrieve a restored or unrestorable individual from a DSH facility within 10 days of notification. As of October 2021, more than $50,000 in critically needed 1991 realignment funding has been diverted from county behavioral health services. This authority, as is, does not align with the policy goal of ensuring safe and secure placements for those deemed IST, nor is the penalty paid by the entity that is notified and responsible to take custody of the individual in a timely manner. This policy cuts local behavioral health funding and services that are critically necessary for diverting the IST population, and only hurts behavioral health providers and the population they treat. For these reasons, we respectfully ask the Legislature to sunset this provision.

Counties look forward to further engagement with DHS on best solutions to alleviate the felony IST waitlist and appreciate the Governor's commitment to investing resources to this complex problem. However, punitive approaches such as returning all conservatees back to counties and diverting 1991 mental health realignment funding only serve to damage the very system – county behavioral health – that is in position to assist. We are hopeful that ongoing conversations and collaboration with all stakeholders take place to ensure that policies such as these do not further destabilize already stressed local behavioral health systems. Thank you for your consideration.

Sincerely,



Ryan Morimune
Legislative Representative
California State Association of Counties (CSAC)
rmorimune@counties.org

cc: Members and Consultant, Senate Budget and Fiscal Review Subcommittee No. 3 on Health and Human Services
The Honorable Nancy Skinner, Chair, Senate Budget Committee
The Honorable Phil Ting, Chair, Assembly Budget Committee
The Honorable Dr. Joaquin Arambula, Chair, Assembly Budget Subcommittee No. 1
Members and Consultant, Senate Budget Committee
Members and Consultant, Assembly Budget Committee
Members and Consultant, Assembly Budget Subcommittee No. 1

Attachment Eight

Reporting Requirements for AB 1869 Backfill

AB 143 (Chapter 79, Statute 2021): Reporting Requirements for AB 1869 Backfill

Pursuant to Government Code 29553.

(a) The amount specified in Chapter 92 of the Statutes of 2020 shall be appropriated according to the methodology specified within this section to counties to provide fiscal relief due to the repeal of the fees specified in Chapter 92 of the Statutes of 2020.

(b) The Director of Finance shall finalize a methodology used to determine per-county allocations commencing in the 2021–22 fiscal year and maintained through the 2025–26 fiscal year. The methodology shall be based on all of the following:

(1) Fifty percent of the annual appropriation shall be based on the three-year average of each county's adult population compared to that of the state from 2017 to 2019, inclusive. For the purposes of this paragraph, population refers to the adult population as documented by the most recent federal census.

(2) Twenty-five percent of the annual appropriation shall be based on the three-year average of each county's total felony and misdemeanor arrests compared to that of the state from 2017 to 2019, inclusive. For the purposes of this paragraph, arrests refer to adult felony and misdemeanor arrests as documented by the Department of Justice.

(3) Twenty-five percent of the annual appropriation shall be based on the three-year average of each county's total traffic and nontraffic felony and misdemeanor filings compared to that of the state from 2017 to 2019, inclusive. For the purposes of this paragraph, filings refer to adult felony and misdemeanor filings as documented by the Judicial Council.

(c) For the allocations in accordance with subdivision (b), each county's board of supervisors shall have the authority to determine how such money will be spent.

(d) No later than October 1, 2021, the Director of Finance shall provide the Assembly and Senate budget subcommittees on public safety, the Legislative Analyst's Office, and the Joint Legislative Budget Committee with the county allocation schedule.

(e) No later than May 1, 2022, each county's board of supervisors receiving fiscal relief pursuant to this section shall submit a report to the Director of Finance, the Legislative Analyst's Office, and the Joint Legislative Budget Committee detailing the actual revenue lost from each individual fee repealed by Chapter 92 of the Statutes of 2020 for each of the three most recent years that a county collected this revenue prior to enactment of Chapter 92 of the Statutes of 2020.

(1) To the extent a county is unable to provide data on its actual revenue loss, the county shall provide a detailed description of how it calculated the revenue loss, report on actual amounts for the most recent year in which they collected with their estimate of the amount along with their methodology of calculation, and report this information by category instead of each of the individual 23 code sections repealed by Chapter 92 of the Statutes of 2020.

(2) To the extent that the local court collects any of the fees repealed by this act on behalf of the county, the court shall provide the three-year revenue collection data to the county upon request.

(f) For the years in which funding is allocated pursuant to the methodology within this section, a county shall submit a report to the Director of Finance, the Legislative Analyst's Office, and the Joint Legislative Budget Committee that documents how the backfill allocation was spent. This report shall be submitted no later than January 10 of every year beginning in 2023 for funding that was provided pursuant to this section in the prior year. At minimum, the report shall contain the following:

(1) The total annual budget of the county department or departments that receive the allocation, the share of this allocation received, and an accounting of the expenditures of the allocation by county department that receive a share of this allocation.

(2) A description of the programs, services, strategies, and enhancements supported by or made with the allocation by county department.

(g) This statute shall remain in effect only until July 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2026, deletes or extends that date.

AB 1869 Final Fee Elimination by Code Section

Code Section	Fee Type
GC §27712	Public Defense Fee
GC §27753	Cost of Counsel
GC §29550(c)	Criminal Justice Administration Fee associated with arrest
GC §29550(f)	Administration screening fee
GC §29550.1	Criminal Justice Administration Fee associated with arrest
GC §29550.2	County Booking Fee
GC §29550.3	City Booking Fee
PC §987.4	Minor Public Defense Fee
PC §987.5	Public Defense Registration Fee
PC §987.8	Public Defense Fee
PC §1203	Interstate Compact Supervision
PC §1203.016(g)	Adult Home Detention Administrative Fee
PC §1203.018(j)	Electronic Monitoring Administrative Fee
PC §1203.1b	Probation Investigation/Progress Report Fee
PC §1203.1e	Parole Supervision Fee
PC §1208.2(b)	Program Administrative Fee
PC §1210.15	Electric Monitoring Fee
PC §3010.08	Parole Electric Monitoring Fee
PC §4024.2(e)	Work Furlough Administrative Fee
PC §6266	Work Furlough Program Fee