

CHAPTER 16: Forensics

The term forensics is often used to refer to people who are receiving mental health services because they have been accused, charged, and/or convicted of a crime. The rights of people receiving mental health treatment vary depending on which law they are being held under and their current placement (state hospital, jail, outpatient etc.).

In recent years, there have been significant changes to the rights of forensic patients. These have occurred through the adoption of regulations, case law, and/or subsequent legislation. Advocates are encouraged to research current laws that apply for the most updated information.

JAIL INMATES

Mental health services in a jail must include:

- screening for mental health problems,
- crisis intervention and management of acute psychiatric episodes,
- stabilization and treatment of mental disorders,
- and medication support services.

(California Code of Regulations (CCR) Title 15, Section 1209(a))

Use of restraints is governed by CCR Title 15, Section 1058. Other rights such as library, correspondence, visiting, exercise, reading materials, access to phones, religion, and grievance procedure can be found at CCR Title 15, Sections 1061-1073.

TRANSFER OF PATIENTS FROM JAIL TO ACUTE PSYCHIATRIC HOSPITAL

An inmate who had been identified as “mentally disordered” and who appears to be a danger to oneself or others, or to be gravely disabled, shall be transferred for further evaluation to a designated Lanterman Petris Short (LPS) treatment facility. They may be involuntarily held on an LPS hold where they will have the same rights as other LPS clients, including the right to change to voluntary status (Penal Code Sections 4011.6, 4011.8; CCR Title 15 Section 1209(b)).

Upon transfer to the LPS designated facility, the transferee can only be held under the same provisions that apply to any other civilly committed individual, i.e., Welfare and Institutions Code (WIC) Sections 5150, 5250, 5260, 5300 and 5350. The

transferee has a right to judicial review of the detention as specified in WIC Section 5275 and all rights afforded patients under WIC Section 5325 et seq. (Penal Code Section 4011.6)

If the person is detained in a mental health facility, the time spent in the facility counts as part of the person's sentence. The person in charge of the jail or juvenile facility must inform the person in charge of the mental health facility of the expiration date of the person's sentence. If the person is to be released from a mental health facility before the completion of their sentence, the facility must notify the jail or juvenile detention facility. The person would complete his sentence in jail or juvenile detention facility.

PSYCHOTROPIC MEDICATIONS

Emergency Situations (up to 72 hours)

The County may involuntarily medicate a jail inmate in an emergency situation. If emergency psychiatric medication is given, the medication can only be that needed to treat the emergency condition. The medication can only be given for as long as the emergency exists. (Penal Code Section 2603(d); CCR, Title 15 Sec. 1217)

An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and due to the seriousness of the emergency it is impractical to first obtain informed consent. (Penal Code 2603(d)(1); CCR, Title 15, Sec. 1217)

Emergency Situations (beyond 72 hours)

If emergency medication is going to be needed beyond 72 hours, an ex parte order can be issued pending a full mental health hearing. This can be done upon a showing that without the medication, emergency conditions are likely to recur. Written notice of the County's intent to seek an ex parte order must be given to the inmate and his/her legal counsel at the time the inmate is informed of the intent to seek an order for involuntary medication.

If the county is going to seek an ex parte order to continue emergency medication beyond 72 hours, it must file with the superior court within 72 hours of starting the emergency medication, unless the patient gives informed consent or the psychiatrist determines the medication is not needed and it is discontinued. The hearing must be held within 21 days, unless the prisoner or inmate's counsel agrees to a different period of time. (Penal Code 2603(d)(2-4))

Involuntary Medication in Non-Emergencies

In order to give involuntary medication on a non-emergency basis to jail inmates, a hearing must be held to determine the inmate meets the criteria for involuntary medication. The criteria for involuntary medication of jail inmates is met if the inmate is gravely disabled and does not have the capacity to refuse medications, or is a danger to self or others. There must also be no less intrusive alternative to involuntary medication, and the medication is in the inmate's best medical interests. (Penal Code Section 2603(c))

A psychiatrist or psychologist must first determine the inmate has a serious mental disorder and meets the criteria for involuntary medication. A psychiatrist also must have prescribed psychiatric medication for the inmate having considered the risks, benefits, and treatment alternatives to involuntary medication. The inmate must be advised of this information. (Penal Code Section 2603(c))

Prior to seeking an order for involuntary medication, a psychiatrist must also have determined the alternatives to treatment with involuntary medication are unlikely to meet the needs of the patient. The jail also has to make a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. If the inmate is in custody awaiting trial, any hearing or requests for ex parte orders shall be submitted to a judge in the superior court where the criminal case is pending. (Penal Code Section 2603(c))

The hearing for involuntary medication must be before a superior court judge or before a court-appointed referee, commissioner or hearing officer. The inmate needs to be provided a written notice of the hearing and legal counsel at least 21 days prior to the hearing, unless medication is being given during an emergency, in which case the prisoner/ inmate would receive expedited access to counsel. The hearing shall not be held more than 30 days after the filing of the notice with the superior court, unless counsel for the inmate agrees to extend the date of the hearing. If the inmate is awaiting arraignment, the inmate needs to be provided counsel within 48 hours of the filing of the notice of the hearing with the superior court, unless counsel has previously been appointed. (Penal Code Section 2603(c))

If an order is granted for involuntary medication, the order is valid for no more than one year. If the inmate is awaiting arraignment, trial, or sentencing, the involuntary medication order is valid for no more than 180 days and must be reviewed by the court at least every 60 days. (Penal Code Section 2603(e))

If a county wants to renew an involuntary medication order, it must give the inmate and his/her counsel 21 days written notice and follow the same due process requirements as the first hearing. (Penal Code Section 2603(h))

INCOMPETENT TO STAND TRIAL - PENAL CODE 1370

Defendants found incompetent to stand trial are those who, as a result of a mental disorder or developmental disability, cannot understand the nature of the criminal proceedings or assist their attorneys in conducting their defense. (Penal Code Section 1367)

PROCEDURE

If, prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, they shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent, and then the court may order a hearing on the issue of mental competence in the superior court (by judge or jury). (Penal Code Sections 1368, 1369)

When a doubt regarding competency to stand trial is raised regarding a defendant with a developmental disability, the court follows the procedures enumerated under Penal Code Sections 1370.1 and 1370.4, including referring the defendant to a regional center for evaluation. These sections apply to all defendants with a developmental disability charged with either a felony or misdemeanor.

The court may order the appointment of one psychiatrist or licensed psychologist (two if the defendant feels competent to stand trial). The psychiatrist or psychologist shall evaluate the defendant to determine if they are competent to stand trial, whether treatment with anti-psychotic medication is medically appropriate and likely to restore the defendant to competency, whether the defendant has the capacity to refuse anti-psychotic medication, and whether the defendant is a danger to self or others (Penal Code Section 1369).

"Developmental disability" means a disability that originates before age 18, continues indefinitely, and constitutes a substantial handicap. It includes mental retardation, cerebral palsy, epilepsy, and autism but excludes conditions solely physical or psychiatric in nature. (Penal Code Section 1370.1(a)(1)(H))

PLACEMENT

On a finding of mental incompetence in a misdemeanor case, the court must order the defendant committed to an available treatment facility approved by the county

mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status under P.C. 1600. The defendant may not be committed to a state hospital unless the director finds that there is no less restrictive appropriate placement available and the director has a contract with the State Department of State Hospitals (DSH) for these placements. (P.C. 1370.01(a)(1-4))

On a finding of mental incompetence in a felony case, the court must order the defendant committed to a DSH facility, or to any other public or private treatment facility approved by the community program director that will promote speedy restoration to mental competence, or placed on outpatient status under P.C. 1600. A DSH treatment facility can be a State Hospital or a county jail treatment facility under contract with DSH to provide competency restoration services. (P.C. 1370(a)(1)(B)(i), WIC 4100)

For people committed as developmentally disabled IST commitments, the court considers the regional center's recommendation for placement. Placement may be in the state hospital, developmental center, or other specified residential or outpatient placements. If the defendant is charged with certain offenses requiring registration as a sex offender or offenses considered a violent felony, options for placement may be restricted (Penal Code Section 1370.1(a)(1)(B)(ii-iii)).

DSH DIVERSION PROGRAM

In recent years, California has seen a drastic increase in the referral to state hospitals of patients who are incompetent to stand trial. The state has also experienced a growing homeless population, which has a high prevalence of mental illness (and co-occurring substance use disorder issues). The 2018-19 State Budget includes \$100 million General Fund over three years for the expansion and development of county diversion programs, with the majority of funding going to the 15 counties with the highest referrals to state hospitals.

What is the DSH Diversion Program?

The DSH Diversion Program is a collaboration between DSH and county governments to develop or expand diversion programs for individuals with serious mental illness who face felony charges and could be determined to be Incompetent to Stand Trial (IST). The DSH Diversion Program provides funding to counties to support community mental health treatment and other services for these individuals.

Why is the program needed?

Some people who are Incompetent to Stand Trial committed felonies that stem from serious mental illness or being homeless. They have difficulty accessing mental

health services and committing to treatment and often cycle through the criminal justice system. The goal of the DSH Diversion Program is to provide these individuals, when a judge deems it safe and appropriate to do so, with long-term community mental health treatment and other services and to avoid criminal charges and institutionalization.

Who is served by the program?

The DSH Diversion Program provides funding to counties to serve primarily individuals who are:

Eligible for diversion under Penal Code Section 1001.35, et. Seq., Diversion of Individuals with Mental Disorders

Diagnosed with schizophrenia, schizoaffective disorder or bipolar disorder;

Charged with a felony;

Not a significant safety risk if treated in the community.

In addition, there must be a significant link between the individual's mental illness or homelessness and the crime they are charged with.

Who is not served by the program?

By law, individuals charged with the following felony crimes are not eligible for diversion:

Rape, murder or involuntary manslaughter;

Sexual abuse of a child or a lewd or lascivious act on a child;

Assault with intent to commit rape, sodomy, or oral copulation.

INVOLUNTARY MEDICATION

Prior to the court making a placement order, the court also hears and determines whether the defendant lacks capacity to make decisions about being given psychotropic medication. The court shall consider the reports prepared under Penal Code 1370 and also determine whether any of the following is true:

a) The defendant lacks capacity and poses a serious harm to self without taking psychotropic medication

The court reviews and decides that the defendant lacks capacity to make decisions about antipsychotic medication. This is based on whether the defendant's mental disorder requires medical treatment with antipsychotic medication. Also, the court

finds that if the mental disorder is not treated with the medication that it is likely that serious harm to the physical or mental health of the patient will result.

This requires evidence that the defendant is having adverse effects to their physical or mental health. Also looking at if the defendant has had these effects before due to a mental disorder and their condition is greatly worse. The fact that a defendant has a diagnosis of a mental disorder only is not enough to show the likelihood of serious harm to the physical or mental health to self. (Penal Code 1370(a)(2)(B)(i)(I))

b) The defendant lacks capacity and is a danger to others and requires psychotropic medication

The court reviews and finds that the defendant lacks capacity and is a danger to others because the party has inflicted, attempted to inflict, or made a serious threat of inflicting substantial harm on another while in custody. If the defendant had done that then the court looks at whether the defendant presents, as a result of mental disorder or defect, a demonstrated danger of inflicting substantial physical harm on others.

Demonstrated danger may be based on a review of the defendant's present mental condition, including looking at past behavior of the defendant within six years before the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence. (Penal Code 1370 (a)(2)(B)(i)(II))

c) Defendant Lacks Capacity and Charged with a Serious Crime and Psychotropic Medication is Likely to Render Defendant Competent to Stand Trial

The defendant is charged with a serious crime against the person or property, and involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial. Also, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. In addition, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the patient's best medical interest given their medical condition. (Penal Code 1370 (a)(2)(B)(i)(III))

Length of Court Order and Emergencies

The court's order for involuntary medication lasts up to one year unless an emergency exists. A court that finds that the defendant lacks capacity and is a danger to self, or others, or would likely be competent with psychotropic medication

shall order involuntary medication. The order will last up to a year. The medication will be ordered by the psychiatrist at the facility. (Penal Code 1370(a)(7))

Involuntary medication may be given in an emergency as described under the law. (WIC Section 5008)

Subsequent Court Orders

If a court finds that the defendant has capacity about antipsychotic medication and consents, then the court's commitment order shall reflect this. The order will also show that if the defendant withdraws consent the treating psychiatrist can determine that the medication is needed.

A psychiatrist who does not gain consent after trying and believes that the defendant lacks capacity shall certify that medication is necessary. A medication review hearing is to be held within 72 hours in front of an administrative law judge at the facility where the defendant is receiving treatment. If the defendant loses, the order for medication is to last twenty-one (21) days, by which time there should have been a court hearing. (Penal Code 1370(a)(2)(D)(i)-(ii))

MAXIMUM COMMITMENT TERM

The maximum commitment for a misdemeanor incompetent to stand trial defendant is one year or the longest permitted prison sentence for the crime charged, whichever is shorter. At the end of this time, conservatorship proceedings may be initiated (Penal Code 1370.01(c)(1-2)).

The maximum confinement time is the same for either an IST defendant who is charged with a felony or for an IST defendant who has a developmental disability: either 2 years (recently reduced from 3 years) or the maximum term of imprisonment provided by law, whichever is shorter. (Penal Code Section 1370(c)(1))

RESTORING COMPETENCY

The commitment ends when (1) the IST defendant has spent the maximum allowable time in the treatment facility, or (2) the IST defendant is judged competent to stand trial.

The treatment facility is required to make regular written reports to the court about the IST defendant's mental condition. (Penal Code Sections 1370(b)(1), 1370.01(b)), 1370.1(b)(1))

If the treatment facility believes that the defendant has regained competence, the facility must file a Certificate of Restoration of Competency with the court, which then holds a hearing to determine competency. (Penal Code Section 1372)

If the defendant believes that competency has been regained, but the treatment facility or community program director disagrees, the defendant may challenge the commitment by writ of habeas corpus. (WIC Section 7250; Penal Code Section 1473)

CONTINUED TREATMENT

An IST defendant can be kept in treatment beyond the maximum commitment time under the following circumstances;

- the defendant is placed on an LPS conservatorship, or;
- the defendant is placed on a Murphy conservatorship, or;
- the defendant is committed to the Department of Developmental Services under WIC Section 6500.

MURPHY CONSERVATORSHIP – WELFARE & INSTITUTIONS CODE 5358

If at the end of the IST commitment period, the defendant meets the criteria for a Murphy conservatorship, the commitment may be "extended."

This extension beyond the maximum period of commitment may be ordered for an IST defendant who:

- (1) Remains incompetent,
- (2) Has been charged with a violent felony which has not been dismissed, and
- (3) Represents a substantial danger of physical harm to others. (Penal Code Section 1370(c)(2), WIC Section 5008(h)(1)(B))

The court may order the county public conservator to initiate Murphy conservatorship proceedings at any time after the defendant has served the maximum term of confinement, or if treatment facility indicates there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future. (Penal Code Sections 1370(b)(1), 1370(c)(2))

INDIVIDUALS DIAGNOSED AS DEVELOPMENTALLY DISABLED

In addition, individuals diagnosed with developmental disabilities may be committed to the State Department of Developmental Services (DDS) under section 6500 et. seq. of the WIC if they are a danger to themselves or others. The definition of dangerousness to self or others includes being found incompetent to stand trial on charges of enumerated violent felonies. If the individual is confined in a facility, there

is no requirement of a recent overt act to make a finding of dangerousness. (WIC Section 6500)

The DDS may place the individual in a state hospital, a developmental center, a licensed community care facility or a health facility for “suitable treatment”, which is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. (WIC Section 6509)

The commitment lasts for a year and can be renewed. (WIC Section 6500)

NOT GUILTY BY REASON OF INSANITY, NGI – PENAL CODE 1026

Defendants found Not Guilty by Reason of Insanity (NGI) are those who, because of a mental condition, were unable to understand the nature and quality of the crime committed, and (*or*) were unable to tell right from wrong when committing the crime (Penal Code Section 25).

PLACEMENT

When the judge or jury finds a defendant NGI, the court will commit the defendant to a state hospital, a mental health facility, or an outpatient program (Penal Code Section 1026).

Before making any placement decision, the court must refer the defendant to the local community program director for a recommendation, which the court usually follows. If the underlying charge is a serious felony, as defined in Penal Code Section 1601, the defendant must remain in a state hospital for at least six months before becoming eligible for outpatient treatment.

RESTORATION OF SANITY

Restoration of Sanity is a two-step process.

At the first step, if the court finds that the NGI defendant no longer poses a danger to oneself or others because of a mental disorder, the defendant will be released to CONREP for a year for outpatient treatment. (Penal Code Sections 1603, 1604)

At the second step, which occurs after a year in CONREP, the judge or jury determines whether the defendant has been "fully restored" to sanity. If so, the defendant is unconditionally released from CONREP. (Penal Code Section 1026.2(e))

The community release provisions of Penal Code Section 1026.2(e) do not apply if the individual has additional time to serve on a prison sentence (i.e., the crime for

which the individual was found NGI was committed while they were already serving a prison sentence) or if restoration of sanity ends a stay of a previously imposed sentence. Such individuals are not eligible for outpatient treatment and on a finding of restoration of sanity must be transferred to the Department of Corrections or the original sentencing court. (Penal Code Section 1026.2(m))

Outpatient treatment is further covered under the Conditional Release Program (CONREP) section VIII below.

LENGTH OF COMMITMENT

A commitment is as long as the longest permitted prison sentence for the crimes the person was convicted of, including the upper term of the base offense and any additional terms for enhancements or consecutive sentences that could have been imposed. Credit for time served under Penal Code Section 2900.5 (time in custody prior to imposition of sentence) may be deducted, but the term may not be reduced for good behavior or time worked while in custody. (Penal Code Section 1026.5(a)(1))

The defendant is released from inpatient treatment when:

- (1) sanity is "restored" and the defendant is released to CONREP as an outpatient, or,
- (2) the defendant has been in the hospital for as long as the maximum possible sentence for the underlying crime.

CONTINUING TREATMENT

The court may extend a defendant's commitment beyond the maximum term every two years if the underlying crime was a felony and if, by reason of a mental disorder, the defendant represents a substantial danger of physical harm to others. (Penal Code Sections 1026.5(b)(1), 1026.5 (b)(8))

Under this provision, a defendant can remain hospitalized or committed indefinitely.

INVOLUNTARY MEDICATION

Individuals found Not Guilty By Reason of Insanity (NGI) have the same right to refuse antipsychotic drugs as Mentally Disordered Offenders (MDO's) and Sexually Violent Predators (SVP's). The Department of State Hospitals must refrain from administering antipsychotic medication to an NGI commitment against their will in a nonemergency situation unless a court determines s/he is "(1) incompetent to refuse the treatment, or (2) a danger to others within the meaning of section 5300, i.e., whether he committed the types of violent or threatening acts specified in section

5300 within the year prior to the recommitment.” (In re Greenshields (2014) 227 Cal.App.4th at p. 1294.)

Prior to the Greenshields court hearing, the state hospital may hold an Interim Involuntary Medication Hearing under 9 CCR 4210.

MENTALLY DISORDERED OFFENDERS, MDO – PENAL CODE 2962 ET AL

An individual may be subject to treatment as a Mentally Disordered Offender (MDO) if they are a prisoner who, at the time of or upon termination of parole, meets the following criteria (Penal Code Sections 2960, 2962):

- (1) The prisoner has a treatable, severe mental disorder that was one of the causes of the commission of the crime, for which the defendant was incarcerated,
- (2) The disorder is not in remission or cannot be kept in remission without treatment,
- (3) The prisoner has been in treatment for the disorder for 90 days or more in the year prior to her parole or release date,
- (4) The disorder causes the prisoner to be dangerous to others, and
- (5) The crime for which the prisoner is was incarcerated involved force or violence or caused serious bodily injury as specified in Penal Code section 2962(e).

If the individual disagrees with the recommendation, they may request a Board of Parole Hearings (BPH). If the BPH rules against the individual a petition may be filed in superior court challenging the determination. After 60 days of inpatient treatment, the individual may request a hearing regarding outpatient treatment. (Penal Code Sections 2964(b), 2966)

PLACEMENT

Once certified, the inmate is committed for inpatient treatment at a state hospital, unless designated officials from DSH certify that outpatient treatment is appropriate or the inmate wins an outpatient hearing before the BPH. (Penal Code Section 2964)

When outpatient placement is found to be appropriate, MDO parolees go into the Conditional Release Program (CONREP).

LENGTH OF COMMITMENT

MDO commitment is technically a special condition of parole, and thus lasts the length of the parole period. The length of the parole period is determined by statute, and depends on the type of sentence imposed. Most prisoners have a maximum parole period of three years.

If a prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, and if the parolee is therefore dangerous to others, involuntary MDO commitment may be extended beyond the period of parole in one-year increments, potentially indefinitely. (Penal Code Sections 2970, 2972(c))

REVOCAION OF OUTPATIENT STATUS

The community program director may revoke outpatient status when the MDO parolee cannot remain safely or receive effective treatment in the community. The MDO parolee has the right to a revocation hearing conducted by the DSH within 15 days of being placed in a secure mental health facility, or within 21 days if good cause exists. In lieu of revocation, the community program director or DSH may also hospitalize an MDO parolee pursuant to the LPS civil commitment scheme. (Penal Code Section 2964(a))

INVOLUNTARY MEDICATION

Under *In re Qawi* (2004) 32 Cal.4th 1, the Court mentioned California Penal Code Section 2972(g) to explain how an individual committed to a state hospital as an MDO is granted the same rights to refuse treatment as an LPS patient. Translated, absent an emergency situation, MDOs have the right to refuse psychotropic medication unless a court finds either at the time the MDO is committed or recommitted, or in a separate proceeding, that either the MDO is incompetent or incapable of making decisions about his medical treatment or, the MDO is dangerous within the meaning of Welfare Institutions Code Section 5300.5. (California Penal Code section 2972(g); *In re Qawi* (2004) 32 Cal.4th at pp. 24-25)

Prior to the *Qawi* court hearing, the state hospital may hold an Interim Involuntary Medication Hearing under 9 CCR 4210.

MENTALLY DISORDERED SEX OFFENDER

The Mentally Disordered Sex Offender (MDSO) statutes were repealed in 1982. However, persons committed as MDSOs before the repeal date can remain under such commitments subject to the continuing jurisdiction of the repealed statutes. A Mentally Disordered Sex Offender is any person who, by reason of a mental disorder, has a predisposition to commit sexual offenses to such a degree that the

defendant is a danger to the health and safety of others. (former WIC Sections 6300-6331; Historical Note to WIC Section 6300)

SEXUALLY VIOLENT PREDATORS, SVP – WELFARE & INSTITUTIONS CODE 6600 ET AL

The term "sexually violent predator" means a person who:

- 1) Has been convicted of a sexually violent offense against one or more victims, and
- (2) Has a diagnosed mental disorder,
- (3) The disorder makes him/her a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent predatory criminal behavior. (WIC Section 6600(a)(1))

"Sexually violent offense" means an act specified in WIC Section 6600, subdivision (b) when committed by force, violence, duress, menace, or fear of immediate, and unlawful bodily injury on the victim or another person or when committed on a child under the age of fourteen years and the offending act or acts involve "substantial sexual conduct" as defined in WIC section 6600.1, and when the act results in a conviction or a finding of not guilty by reason of insanity. (WIC Section 6600(b))

"Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization. (WIC Section 6600(e))

SVP commitments may only be sought for prisoners under sentence to the Department of Corrections or whose parole has been revoked. (WIC Section 6601(a))

If the screening finds that the individual is likely to be an SVP, the individual is referred for a full evaluation by the Department of State Hospitals. (WIC Section 6601(c))

If the appointed mental health professionals agree that the prisoner meets SVP criteria, information is forwarded to the county that convicted the prisoner. (WIC Section 6601(d-i))

If the district attorney or county counsel decides to file a petition for commitment, a probable cause hearing and trial are held. (WIC Section 6602)

SVP's are committed by the court to the custody of DSH for a two-year term, with a right to request an annual review. If a court finds the person is no longer an SVP, they are unconditionally released and discharged.

PLACEMENT

Men committed under WIC Section 6600 (pre-trial detainees) are held at Coalinga State Hospital or in county jail as they wait a probable cause hearing. Once the judge or jury has determined the person is a sexually violent predator they are committed to Coalinga State Hospital in the custody of the Department of State Hospitals. Women committed under this section are placed at Patton State Hospital.

After confinement of at least a year, an SVP may be placed in a conditional release program if a court finds at a hearing that the person would not be a danger to the health and safety of others in that it is unlikely that he or she will engage in sexually violent criminal behavior owing to his or her diagnosed mental disorder if under supervision and treatment in the community. (WIC Sections 6607, 6608)

INVOLUNTARY MEDICATION

Individuals under a Sexually Violent Predator (SVP) commitment have the same right to refuse antipsychotic drugs as mentally disordered offenders (MDO's). "...an [SVP] can be compelled to take antipsychotic medication in a nonemergency situation only if a court, at the time the [SVP] is committed or recommitted, or in a separate proceeding, makes one of two findings: (1) that the [SVP] is incompetent or incapable of making decision about his medical treatment; or (2) that the [SVP] is dangerous within the meaning of...section 5300..." (In re Calhoun (2004) 121 Cal.App.4th 1315, 1322.)

Prior to the Calhoun court hearing, the state hospital may hold an Interim Involuntary Medication Hearing under 9 CCR 4210.

TREATMENT

As required by law, treatment is voluntary. Treatment is provided by a team which includes psychologists, psychiatrists, social workers, psychiatric technicians and nurses.

The fundamental goal of the sex offenders treatment program is for the individual to acquire social skills and to prevent recurrence of sexual offending. The program uses a combined approach in order to strengthen the individual's self-regulation skills to prepare him for a life free of sexual offending. The intensity of treatment is

matched to the individual's risk level of reoffending, so that high-risk offenders receiving more intensive and extensive treatment.

It is usually only through participation in the treatment program that an individual can become eligible to be placed in the Conditional Release Program (CONREP).

Individuals in treatment at DSH receive an annual examination to determine if they continue to meet the SVP criterion. If DSH has reason to believe the individual is no longer an SVP, judicial review is sought. If the Superior Court agrees, the individual is unconditionally released and discharged.

If DSH determines that the individual may benefit from conditional release, or the court rules against unconditional release in favor of conditional release, the individual may be placed in CONREP.

When patients committed under the SVP statutes are granted conditional release by the court they will enter community treatment and supervision under CONREP. Generally speaking, all conditionally released SVPs receive an intensive regimen of treatment and supervision that includes individual contact by supervision staff, specialized sex offender treatment, weekly drug screening, surveillance, polygraph examinations, and active Global Positioning System tracking.

CONDITIONAL RELEASE PROGRAM (CONREP)

CONREP is a statewide program of mental health outpatient treatment in local communities under court supervision. When an individual is committed to CONREP, the individual remains within the constructive custody of the Department of State Hospitals (DSH). (Penal Code Sections 1605, 1615)

Courts may order immediate outpatient commitment with CONREP instead of confinement in a state hospital if the defendant's crime was not classified as dangerous and if the community program director reports that the defendant will not be a danger to the health and safety of others and will benefit from such outpatient status. (Penal Code Sections 1601, 1602)

People on Incompetent to Stand Trial (IST), Not Guilty by Reason of Insanity (NGI), Mentally Disordered Offender (MDO), and Mentally Disordered Sex Offender (MDSO) commitments are all eligible for outpatient placement in the CONREP program. Individuals on Sexually Violent Predator (SVP) commitments are also eligible for CONREP.

Note that NGI defendants must be committed to CONREP for one year before they can be fully "restored to sanity" and unconditionally released.

PLACEMENT

The director of the state hospital or treatment facility, along with the community program director, must recommend to the court that the defendant would benefit from outpatient status, and would not be a danger to the health and safety of self or others. Once completed, the court then holds a hearing to approve the outpatient plan. (Penal Code Sections 1603, 1604)

Persons committed under NGI may also petition the committing court themselves for release to the CONREP program. (Penal Code 1026.2)

For MDO patients, however, the Board of Parole Hearing (BPH), rather than the court, makes the decision about CONREP placement. (Penal Code Section 2964(a) and (b))

NGI and IST defendants charged with serious felonies as defined in must first spend six months in the state hospital or other mental health facility before they are eligible for CONREP placement. (Penal Code Section 1601)

LENGTH OF COMMITMENT

CONREP outpatient status lasts for one year, and is subject to renewal. After one year, the court must hold a hearing no later than 30 days from the one-year anniversary and renew, revoke, or discharge the patient from CONREP. (Penal Code Section 1606)

For MDSOs, NGIs, and MDOs, time spent on outpatient status, except when placed in a locked facility, is not counted as actual custody and is not credited towards the person's maximum term of commitment (although for MDOs, their maximum period of parole is not extended by placement in CONREP). (Penal Code Section 1600.5)

Once per year, patients on NGI commitments may also seek release from outpatient commitment by applying for complete restoration of sanity. (Penal Code Section 1026.2)

REVOCAATION

If at any time during the outpatient period, the outpatient treatment supervisor is of the opinion that the person requires extended inpatient treatment or refuses to accept further outpatient treatment and supervision, the community program

director shall request revocation of outpatient status from the superior court. (Penal Code Section 1608)

In addition, if at any time during the outpatient period or placement with a local mental health program pursuant to subdivision (b) of Section 1026.2 the prosecutor is of the opinion that the person is a danger to the health and safety of others while on that status, the prosecutor may petition the court for a hearing to determine whether the person shall be continued on that status. (Penal Code Section 1609)

The CONREP director may confine the patient to a mental health facility, or even a jail, pending the revocation hearing if the defendant determines that the patient is dangerous to self or others. However, CONREP may house the patient in the county jail only if the jail provides treatment for the patient, as well as security for both the patient and the other inmates. The patient must be separated from the general population of the jail. (Penal Code Section 1610)

The CONREP director must submit a written application for the court's consideration within one judicial day of the transfer stating the justification for jail confinement. A CONREP patient confined in a facility pending revocation has the rights under WIC Section 5325 and may file a writ of habeas corpus protesting the confinement. (Penal Code Section 1610)