



CONTRA COSTA
MENTAL HEALTH
COMMISSION

1340 Arnold Drive, Suite 200
Martinez, CA 94553

Ph (925) 313-9553

Fax (925) 957-5156

cchealth.org/mentalhealth/mhc

**Mental Health Commission
MHSA-Finance Committee Meeting
Thursday, August 19, 2021, 1:30-3:00 PM
Via: Zoom Teleconference:**

<https://zoom.us/j/5437776481?pwd=WDE3N05ZMEF0SzdCTkU3SHZUTHh6QT09>

Meeting number: 543 777 6481

Join by phone:

1 669 900 6833 US

Access code: 543 777 6481 / Passcode: 148431

AGENDA

- I. Call to order/Introductions
- II. Public comments
- III. Commissioner comments
- IV. Chair comments
- V. APPROVE minutes from the June 17, 2021 MHSA-Finance Committee meeting
- VI. DISCUSS/RECEIVE the latest available MHSA budget projections with Jennifer Bruggeman, LMFT, CCBHS MHSA Program Manager.
*Purpose: Find out the latest available projections and when they are updated so we can find when 3% COLA can be granted to CBO's with MHSA contracts.
MOTION: If possible, include a 3% Cost of Living Adjustment (COLA) in the county MHSA budget for the MHSA portion of CBO contracts for the fiscal year 2022-2023.
- VII. DISCUSS (per the attachments) all possible facets of the Contra Costa jail and 20 beds State Hospitals contract and possible outcomes of the 08/17-11/30/2021 Incompetent to Stand Trial (IST) Solutions Workgroup .
*Purpose: Develop best possible options for presentations at the September 1 Mental Health Commission (MHC) meeting.

(Agenda continued on Page Two)



The Contra Costa County Mental Health Commission is appointed by the Board of Supervisors to advise them on all matters related to the county's mental health system, in accordance with mandates set forth in the California State Welfare & Institutions Code, Sections 5604 (a)(1)-5605.5. Any comments or recommendations made by the Mental Health Commission or its individual members do not represent the official position of the county or any of its officers. The Commission is pleased to make special accommodations, if needed, please call ahead at (925) 313-9553 to arrange.



MHSA-Finance Committee Meeting Agenda (Page Two)

Thursday, August 19th, 2021 ♦ 1:30 pm – 3:00 pm

- VIII. Proposed MOTION: Ask Contra Costa Behavioral Health Services (CCBHS) to develop county housing, care and service plans for the county IST population based on:**
- A. Recently enacted and signed AB 133 and special mental and behavioral services funding provided for in the final 2021-2022 state budget.**
 - B. \$3B in Mental Health & Substance Use Disorder (SUD) federal funding in the recently signed American Rescue Plan.**
- IX. Adjourn**

Attachment #1--State funding to Possibly Help Contra Costa County with its IST Population

Governor Newsom latest Behavioral Health 2021-2022 Spending proposals:

- More than \$2.2 billion for grants to construct, acquire, and rehabilitate new facilities to expand the community continuum of behavioral health treatment resources.
NOTE: This is the funding referred to in my attached discussion with my CA State Assn. of Counties (CSAC) source. Per CSAC, this funding will not be available until 2022 as it will be awarded on a competitive application basis. It will need to be spend from 2022-2025 fiscal years.
- More than \$4.4 billion over five years to create a new and innovative behavioral health system for youth ages 0 to 25.
- Almost \$800 million to expand the behavioral health workforce.
- \$205 million in state and federal funds for the Mental Health Student Services Act program.
- \$429 million in federal funding to the Department of Health Care Services (DHCS) for evidence-based behavioral health programs.
- \$222 million in one-time funding to strengthen county prevention efforts to avoid youth entering the foster care system and \$138 million in one-time funding to help address the complex needs of foster youth as an alternative to out-of-state placements.
- \$805 million for the Community Care Expansion program under the Department of Social Services to address the lack of board and cares for individuals living on Social Security Income, including those with mental illnesses.
- \$63.1 million in one-time funding to support the California Reducing Disparities Project under the California Department of Public Health.

Possible Outcomes of bi-weekly IST Solutions Workgroup meetings from 08/17-11/30/2021

IMPORANT: AB 133 (400+page omnibus Health & Human Services “trailer” spending bill doe NOT increase state hospital’s beds capacity. Thus, below is what likely could be the focus of the workgroup :

- **Misdemeanor IST (MIST):** No longer eligible for admission to a state hospital
- **Felony IST (FIST):** Mandatory reduction in wait time once a person is declared Felony IST. Focus will be on courts decreasing determinations of FIST status and on local treatment as alternative to state hospitals.
- **Re-determination of Felony Incompetent to Stand Trial (FIST) status:** If a person detained in custody receives treatment and shows evidence of ability to participate in court proceedings after being determined FIST, a re-determination of status might occur. This might lead to cancelation of referral to a state hospital.
- **Consequence of insufficient FIST reduction:** If state hospital capacity for FIST continues to be exceeded, discharge of LPS clients back to the county will occur.
- **Penalties for untimely return to county:** If a county is found to not arrange discharge of clients as soon as DSH determines its level of care is not needed, the county will pay a daily penalty for each day beyond discharge date set by DSH.
- **Focus on least restrictive environment:** This is a centerpiece to DSH reform and will carry through to all levels of care.
- **Persons found non-restorable:** Will be returned to the county. If there is validated potential of danger to the community, a conversion to an LPS Murphy Conservatorship most likely will occur. If the person is not determined dangerous, it will be a county responsibility to arrange and provide care.

NOTE: The average length of stay for an LPS (primarily Murphy) conserved person in a state hospital is 12 times longer than a Felony Incompetent to Stand Trial (FIST) person.

Given the above interlinked issues, a lot of responsibility will fall to counties BHS departments and especially Detention Health personnel. Families and stakeholders at large will need to understand that the state is mandating an anticipated focus on least restrictive, community based care and clearly intends to decrease state hospital utilization.

Attachment 2--Key Contra Costa Incompetent To Stand Trial Beds Questions and Comments

1. What county owned properties are available to be refurbished to locked facilities standards to serve up to 100+ persons legally adjudged to be currently Incompetent to Stand Trial?
2. What county owned properties are currently available to be refurbished to locked facilities standards to serve up to 20 persons legally adjudged Felony “long-term” Incompetent-to-Stand Trial ((FIST—i.e. LPS Murphy Conservatorship)?
3. Are there undeveloped county owned properties upon which buildings could be built to house and serve both of the above populations? If so, where and what is their current condition?
4. If not, are there below market undeveloped properties in this county which could be purchased and easily be developed to serve both of the above populations? If so, where and what is their current condition?

Purpose of seeking county owned properties—get around the strong Not In My Back Yard (NIMBY) stigma against siting facilities serving our loved ones with major mental and behavioral health challenges. Historical Examples:

- 1998-1999: Virulent community fight for the Crestwood Healing Center in Pleasant Hill
- 2010-2011: Major east county fight over the proposed Knightsen Ranch home project which has not come to fruition.

NOTE: Other counties (such as Alameda, Santa Clara, Santa Barbara, and Los Angeles) have contracted with Institute of Mental Diseases (IMD) Mental Health Rehabilitation Centers (MHRCs) located in their locale (i.e. “borders”) to house persons legally adjudged either IST or LPS Murphy Conservatorship. Contra Costa County does not currently have such facilities within their borders.

If nothing is done, I believe there is a great risk of persons considered “unrestorable” being sent back from state hospitals to county jails and, frankly, left to “waste away without hope,” much like what occurred in colonial America prior to Dorothea Dix push for state hospitals. This could totally undo the great quality of care strides already being implemented by county jails in the recently agreed upon and signed agreement with the Prison Law Office. We cannot let this happen.

Attachment 3--AB 133 IST "Trailer Bill" pertinent Incompetent to Stand Trial language.

This 400+ page bill was passed by the Legislature and signed by Governor Newsom on July 27, 2021

(35) Existing law specifies a process for declaring a defendant who is charged with a felony to be mentally incompetent to stand trial. Existing law requires the court to order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility or to any other available public or private treatment facility that meets stated specifications, or placed on outpatient status.

This bill would authorize the State Department of State Hospitals to conduct a reevaluation, as defined, in person or by video telehealth, of a defendant in county custody if the defendant has been committed to and awaiting admission to the department for 60 days or more, as specified. The bill would require the county jails to provide the department confidential access to the defendant for evaluation, including establishing and maintaining remote access capabilities at the jail for this purpose. By imposing additional duties on county jails, this bill would create a state-mandated local program. The bill would require the department to provide funding at a rate set by the department for reimbursement of information technology support and a portion of staff time used to facilitate telehealth interviews and evaluations of felony defendants.

This bill would also require the California Health and Human Services Agency, along with the State Department of State Hospitals, to convene an Incompetent to Stand Trial Solutions Workgroup to identify solutions to advance alternatives to placing defendants at a State Department of State Hospitals facility who are found incompetent to stand trial. The bill would require the workgroup to submit recommendations to the agency and the Department of Finance on or before November 30, 2021, for short-term, medium-term, and long-term solutions that can be accomplished on or before specified dates. Until December 31, 2024, if the recommendations cannot be completed, as specified, or if other described conditions are not met, the bill would authorize the State Department of State Hospitals, upon specified approval, to discontinue admissions for specified patients, impose patient reduction targets, and charge 150% of the daily bed rate for counties for specified patients that are above the patient reduction targets.

Existing law prohibits a person who is mentally incompetent, as specified, from being tried or sentenced for a criminal offense. Existing law requires the court, upon a finding that a criminal defendant is mentally incompetent to stand trial, to order that defendant to be committed to a facility of the State Department of State Hospitals (DSH), or other available facility, for restoration of competence. 04 Existing law requires the medical director of the facility, within 90 days after commitment, to make a report of the defendant's progress to the court, as specified. If that report indicates that there is no substantial likelihood of the defendant regaining mental competence in the foreseeable future, or if, after a specified interval of treatment, the defendant is not restored to mental competence, existing law requires the defendant to be returned to the court for further proceedings.

This bill would prohibit a person from being admitted to a state hospital under these provisions.

This bill would require a mentally incompetent defendant in the custody of a DSH facility, for whom there is no substantial likelihood of restoration of competency or who, after a specified interval of treatment, has not been restored to mental competence, to be returned to the custody of the county, as specified.

The bill would also authorize DSH to charge a county that fails to take custody of such a defendant a daily rate, as specified, for any time that the defendant remains in DSH custody.

The bill would make other conforming changes.

By requiring counties to take, or pay for, the custody of these defendants, this bill would impose a statemandated local program.

**Attachment 4--Final Thoughts for Contra Costa Incompetent to Stand Trial (IST) beds
issue**

This issue involves at least three county entities:

- The District Attorney's (DA) office which will very likely require especially Felony Incompetent to Stand Trial (FIST) clients be sent to a locked facility, hopefully not jail, in Contra Costa County.
- The Public Defender's office which will definitely want their FIST clients be sent to a locked treatment services, definitely NOT jail, facility, hopefully in Contra Costa County.
- Contra Costa Behavioral Health Services (CCBHS) which, either itself or through contracts, would provide the treatment and rehabilitation services for this population in facilities to be built with currently available state and federal funds for this purpose in this county.

For Misdemeanor Incompetent to Stand Trial (MIST) clients, one of the desired Mental Health Diversion (MHD) programs, Assisted Outpatient Treatment (AOT), would require:

- This program be expanded from 75 to perhaps 100 persons
- The current Mental Health Systems (MHS) contracted staff be trained in Forensic Assertive Community Treatment (FACT) care for this additional forensic population.
- Current Mental Health Services Act (MHSA) contracted costs for this current 75 person, civil law program are approx. \$2.25M annually. Needed additional required FACT training for the MHS ACTiOn staff to serve and additional up to 25 clients would likely boost annual program costs to at least \$2.75M-\$3M annually, including additional housing.

The legislative language of signed AB 133, in my view, basically "forces" Mental/Behavioral Health Services departments across the state (including Contra Costa County) to develop locally based systems of care for these populations. This increases the need for continual, ongoing advocacy to permanently repeal the Institute of Mental Diseases (IMD) Medi-Cal Reimbursement Exclusion for persons ages 21-64 in self-contained facilities with more than 16 beds.

Any other thoughts?—to be discussed at the August 19, MHC MHSA-Finance Committee meeting from 1:30-3 PM.

Douglas Dunn, Chair, Mental Health Commission (MHC) MHSA-Finance Committee

11:34 AM PDT Friday, August 13, 2021

CSAC Response to my Questions

- Is the \$2.2B in grants competitive by county and/or public behavioral health system? If so, what is the proposed competitive "process"? Hopefully, there is some "equity" among the various population sized large/medium/small urban and rural counties.

It is competitive and will be segmented between county size/population/Medicaid eligible. The exact competitive buckets have yet to be hashed out, but we continue to advocate for a fair process such as what you describe above.

- Can this funding be used for in-county continuum of care locked facilities when locally deemed necessary?

Yes!

- Must these grants be both competed for and used only in the 2021-2022 fiscal year?

Grant awards won't go out until 2022 at the earliest; awardees will have 3 years to expend the funds but must begin reporting progress 90 days after receipt.

- Is the funding to expand the behavioral health workforce for only the 2021-2022 fiscal year or potentially "spread over" several fiscal years?

Spread over 3 fiscal years – but lots of details still need to be worked out.

We have been talking with CHHS Agency about IST workgroup membership – will make sure they know of your offer to serve!



**Incompetent to Stand Trial Solutions Workgroup
Meeting Notice and Agenda**

Date:

Tuesday, August 17, 2021

* 10:00 a.m. - 12:00 noon

Register in advance for this Zoom Webinar by clicking here: [Registration Link](#)

After registering, you will receive a confirmation email containing information about joining the webinar.

***** SPECIAL NOTICE OF PUBLIC MEETING*****

Pursuant to Governor Newsom's Executive Order N-25-20, issued March 12, 2020, the upcoming meeting of the Incompetent to Stand Trial Solutions Workgroup will be conducted by way of teleconferencing. Interested persons may observe the meeting by joining the Zoom Webinar meeting.

*Meeting time subject to change

AGENDA

1. Introductions & Opening Remarks

*Mark Ghaly, MD, MPH. Secretary, California Health and Human Services Agency
and Stephanie Clendenin, Director of Department of State Hospitals (DSH)*

2. Ground Rules and Workgroup Process

Karen Linkins, Principal, Desert Vista Consulting

3. DSH Overview of the Felony Incompetent to Stand Trial Challenges, Data and Efforts

Stephanie Clendenin, DSH Director, Dr. Katherine Warburton, DSH Medical Director, Chris Edens, DSH Deputy Director of Forensics Services Division

4. Discussion on Assessment of IST Challenges & Opportunities

Facilitated by Karen Linkins, Principal, Desert Vista Consulting

5. Call for Public Comment

Members of the public may speak to any item on the agenda. The right to limit the duration of the public comment is reserved by the Chair of the workgroup

The order in which agenda items are considered may be subject to change. Public comment will be taken at the end of the meeting. Prior to making your comments, please state your name for the record and identify any group or organization you represent. Depending on the number of individuals wishing to address the Workgroup, the chair may establish specific time limits on comments.

Any person who wishes to request this notice or other meeting materials in an alternative format, requires translation services, or needs any disability-related modification or accommodation, including auxiliary aids or services, which would enable that person to participate at the meeting must make that request at least five (5) business days prior to the meeting date to: ISTSolutionsWorkgroup@dsh.ca.gov



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INCOMPETENT TO STAND TRIAL (IST) SOLUTIONS WORKGROUP

About

The California Health and Human Services (CHHS) Agency and the Department of State Hospitals (DSH) are convening an Incompetent to Stand Trial Solutions (IST) Workgroup (Workgroup) to identify actionable solutions that address the increasing number of individuals with serious mental illness who become justice-involved and deemed Incompetent to Stand Trial (IST) on felony charges.

The purpose of the Workgroup is to identify solutions to advance alternatives to placement in DSH restoration of competency programs and may include:

- strategies for reducing the number of individuals found incompetent to stand trial;
- reducing lengths of stay for felony IST patients;
- providing early access to treatment prior to transfer to a DSH program;
- increasing diversion opportunities and treatment options, among other solutions.

The Workgroup will submit recommendations to CHHS and the Department of Finance on or before November 30, 2021, for short-term, medium-term, and long-term solutions.

To share comments or to be added to the IST Workgroup email distribution list, please contact ISTSolutionsWorkgroup@dsh.ca.gov.

English

Members

- **Stephanie Clendenin**, Chair, IST Solutions Workgroup & Director, California Department of State Hospitals (DSH)
- **Stephanie Welch**, California Health and Human Services Agency
- **Nancy Bargmann**, Director, California Department of Developmental Services (DDS)
- **Adam Dorsey**, Program Budget Manager, California Department of Finance (DOF)
- **Brenda Grealish**, Executive Officer, Council on Criminal Justice and Behavioral Health (CCJBH), California Department of Corrections and Rehabilitation (CDCR) Office of the Secretary
- **Tyler Sadwith**, Assistant Deputy Director, Behavioral Health, California Department of Health Care Services (DHCS)
- **Brandon Barnes**, Sheriff, Sutter County Sheriff's Office
- **John Keene**, Chief Probation Officer, San Mateo County & President-Elect, Chief Probation Officers of California CPOC)
- **Stephanie Regular**, Assistant Public Defender, Contra Costa County Public Defender Office & Co-Chair of the Mental Health Committee of the California Public Defender Association (CPDA)
- **Veronica Kelley**, Executive Director, California Behavioral Health Directors Association (CBHDA)
- **Josh Gauger**, Legislative Representative, Administration of Justice, California State Association of Counties (CSAC)
- **Scarlet Hughes**, Executive Director, California Association of Public Administrators, Public Guardians and Public Conservators (CAPAPGPC)
- **Jessica Cruz**, Executive Director, National Alliance of Mental Illness (NAMI) – California
- **Pamila Lew**, Senior Attorney, Disability Rights California (DRC)
- **Francine Byrne**, Judicial Council of California
- **Jonathan Raven**, Chief Deputy District Attorney, Yolo County (CDAA)

Meeting Dates

- Tuesday, August 17, 2021
- Tuesday, August 31, 2021
- Wednesday, September 15, 2021
- Wednesday, September 29, 2021
- Tuesday, October 12, 2021