

**Department of State Hospitals**  
**Incompetent to Stand Trial Solutions Proposal**

The 2021 Budget Act included \$75 million in fiscal year (FY) 2021-22 and \$175 million in FY 2022-23 and ongoing to support the immediate implementation of actionable solutions, based on recommendations identified by the Incompetent to Stand Trial Workgroup, to provide timely access to treatment for individuals with serious mental illnesses who are found incompetent to stand trial (IST) on felony charges. The Administration proposes a total of \$571 million ongoing beginning in FY 2022-23 to support implementation of solutions to provide timely treatment and support the ongoing efforts to decriminalize mental illness in California.

This document provides background regarding California's IST crisis, describes the elements in the Administration's proposal and serves as the basis for further discussions with stakeholders and the Legislature regarding the proposed solutions to be implemented.

**Background**

Like most states in the country, California is home to thousands of vulnerable and sick individuals who, as a result of not being engaged in early, upstream treatment and support interventions, decompensate to a point where engagement and treatment is difficult. The lives of many of these Californians are lives of illness, vulnerability, and homelessness, and they often cycle in and out of incarceration. Criminal defendants who are unable to understand criminal proceedings or assist counsel in their defense are determined by a court to be Incompetent to Stand Trial (IST). If these individuals are charged with a felony, they can be committed to the Department of State Hospitals (DSH) to provide clinical and medical services with the goal of restoring their competency and enabling them to return to court to resume their criminal proceedings.

Although the 2022-23 Governor's Budget and recent prior budget acts make significant investments that will expand community based behavioral health infrastructure and services, there is still an increasing number of individuals with under or untreated mental health conditions who are being found IST and referred to DSH. Despite recent efforts including increased bed capacity, decreases to the average length of stay, and the implementation of county-based treatment programs, the increasing number of county IST referrals has resulted in a large waitlist and long wait times for defendants pending placement to DSH. Furthermore, the impacts of the COVID-19 Pandemic and necessary infection control measures put in place at DSH facilities resulted in slower admissions and reduced capacity for the treatment of felony ISTs at DSH.

In 2015, the American Civil Liberties Union sued DSH (*Stiavetti v. Clendenin*) alleging that the amount of time IST defendants were waiting for admission into a DSH treatment program violated individuals' due process rights. The Alameda Superior Court ultimately ruled that DSH must commence substantive treatment services within 28 days from receipt of commitment for felony IST patients, with a specified timeline for meeting that standard over the next three years.

In 2021, the Legislature enacted Welfare & Institutions Code (WIC) section 4147 through the passage of Assembly Bill 133 (Chapter 143, Statutes of 2021) and the Budget Act of 2021 (Chapter 69, Statutes of 2021), which charged the California Health & Human Services Agency (CalHHS) and DSH to convene an IST Solutions Workgroup (Workgroup) to identify actionable solutions that address the increasing number of individuals with serious mental illness who become justice-involved and deemed IST on felony charges. The legislation also includes triggers that will authorize DSH to stop admission of Lanterman-Petris-Short (LPS) patients and impose LPS census reduction targets if satisfactory progress towards implementing Workgroup solutions is not made within the outlined timeframes.

The IST Workgroup convened between August 2021 and November 2021 with several representatives and stakeholders from multiple state agencies, the Judicial Council, local government, and justice system partners, as well as representatives from patients' rights and family member organizations. Per the statute, the Workgroup identified short-, medium-, and long-term solutions to advance alternatives to placement in DSH restoration of competency programs. The Workgroup report released on November 30, 2021 summarizes identified strategies and solutions and can be reviewed at: [https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST\\_Solutions\\_Report\\_Final\\_v2.pdf](https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf).

### **DSH IST Solutions Proposal Summary**

DSH proposes to implement the following solutions informed by the recommendations developed by the IST Solutions Workgroup. Utilizing a combination of existing funding for IST programs, the \$75 million in FY 2021-22 and \$175 million ongoing that was set aside to support IST solutions implementation, the Governor's Budget proposes a total of \$571 million in ongoing funding beginning in 2022-23. The components of the proposal below will provide early stabilization, care coordination, expand community-based treatment and diversion options for felony ISTs that will help end the cycle of criminalization and increase community transitions for state hospital patients. Collectively, these proposals will also assist the state in meeting treatment timelines ordered by the Superior Court in *Stiavetti v. Clendenin*. These proposals also have corresponding proposed trailer bill language, which will be made publicly available in the near future.

## **Early Stabilization and Community Care Coordination**

The goal of Early Stabilization and Community Care Coordination is to provide timely access to treatment and to promote stabilization of IST defendants to increase community-based treatment placements.

### 1. Stabilization and Early Access Treatment

\$24.9 million from the \$75 million current year set-aside and \$66.8 million ongoing will be dedicated to providing essential treatment services to individuals on DSH's IST waitlist. This robust program will provide access to treatment at the earliest point possible upon IST commitment when individuals are arrested and booked into jail. Treatment will be facilitated in partnership with county jail mental health providers for individuals found to be IST on felony charges and will include administration of medications, increased clinical engagement, and competency education. Existing Jail-Based Competency Treatment (JBCT) program infrastructure and resources will be leveraged to offer early access to treatment services for additional felony IST defendants waiting in jails.

In addition, resources are included to support the cost of psychotropic medications including long-acting injectable (LAI) medications. The goal is to facilitate the stabilization and medication compliance of IST patients, both of which will promote increased eligibility and placement in a diversion or other community-based treatment programs.

### 2. Care Coordination and Waitlist Management

As DSH continues to add community-based programs to the menu of patient placement options to mitigate the IST crisis, DSH's Patient Management Unit's (PMU) role as the hub of patient information and coordination continues to grow more complex. \$1.7 million from the current year set-aside and \$4.9 million in budget year is included to further enhance the tracking and management of all felony IST patients committed to the department. Teams will screen all felony IST patients to determine eligibility for community-based programs, provide enhanced monitoring of the waitlist, and provide commitment-to-admission case management to coordinate appropriate placements and maximize bed usage for ISTs. Resources are included to enhance existing technology systems and to develop a statewide transportation contract to transport patients between facilities within the DSH continuum of care to better facilitate inpatient admissions and transfers. Also included are resources to assist with gathering and maintaining high data quality and meeting data reporting requirements under *Stiavetti*.

## **Expanding Felony IST Community Programing via Community Based Restoration and Diversion**

The goal of expanding Community Based Restoration (CBR) and Diversion programs is to provide care in the most appropriate community-based setting as an alternative to a placement in a DSH bed. The DSH-Diversion program is designed to serve eligible felony IST defendants in intensive community-based services and, if defendants are successful in the program, to have the current charges dropped. DSH's CBR program is also community-based treatment, but with the focus of restoring competency so a defendant's criminal proceedings can resume. Once an individual is restored to competency and their charges are resolved or an individual completes diversion and the charges are dropped, the goal is to transition them to long-term community treatment and support to ultimately reduce the cycle of criminalization. DSH estimates that 60-70% of IST commitments will be eligible for services each year in a community-based program, for a total of approximately 3,000 felony ISTs based on the current (first quarter of 2021-22) monthly average referral rate of 455 ISTs.

The expansion of existing CBR and Diversion programs are made alongside an investment in infrastructure funding to support a dedicated inventory of community placements, most notably housing, to serve felony ISTs in these programs. The following program enhancements were developed in response to the recommendations of the IST Solutions Workgroup.

### 1. Housing Augmentation for Current Diversion Contracts

\$42 million of the \$75 million IST Solutions current year set-aside is dedicated to a one-time interim housing investment for felony IST clients participating in the DSH Diversion program. An additional \$18 million in funds from the existing Diversion program will also be leveraged. \$75,000 per client will support the cost of appropriate housing to facilitate increased placements into county Diversion programs. This funding will be limited to new clients who have been found felony IST and may not be used to support likely-to-be IST defendants. Counties can utilize this funding to provide housing to diversion clients in the most appropriate level-of-care including, but not limited to short-term treatment facilities such as Institute for Mental Disease (IMD) and Mental Health Rehabilitation Centers, residential housing with clinically enhanced services, board and care homes, or other appropriate residential facilities.

These resources are designed as a short-term solution to increase the number of felony ISTs served in county diversion programs. Limited placements and housing inventory in the community, as well as the stigma associated with this population, creates barriers for counties that current

Diversion funding levels cannot overcome. This additional funding will support county efforts to secure appropriate placements and housing for Diversion clients until DSH is able to partner with counties to establish long-term residential housing infrastructure (see next section).

2. Felony IST Residential Housing Infrastructure Investments – 5,000 CBR or Diversion Beds

\$6.4 million from the current year set-aside and \$233 million one-time funds are dedicated to infrastructure to develop residential housing settings to support felony IST individuals who are participating in either community - based restoration or diversion programs. DSH estimates that approximately 3,000 of the individuals found IST annually are eligible for participation in community-based treatment programs. Average lengths of stay of 18-20 months results in a housing deficit of approximately 5,000 beds. The proposed funding level assumes these beds will be spread across approximately 700 housing units of 8-10 beds each and approximately \$350,000 in start-up funds will be provided for each unit to cover the down payment, necessary retrofitting, and furnishings for staff and patients. The ongoing cost of operating the homes will be provided through a per-patient rate (described below), paid to counties or to service providers, who are responsible for securing client housing and providing wrap-around treatment services.

This residential housing program will complement the IMD, and Sub-Acute infrastructure program funded in the 2021 Budget Act. IMD and sub-acute beds are a key component for treating felony ISTs in the community. DSH is currently developing new IMD and Sub-Acute capacity across the state, and these beds will be available as a step-down stabilization option for ISTs transitioning from jail to the community and can also be utilized when IST clients in the community need a higher-level of care. Together, these programs will create a complete continuum of community placement and housing options for ISTs across the state.

3. Felony IST Community Program Funding for CBR or Diversion Clients

In combination with current budget authority to support existing CBR and Diversion programs, DSH will invest \$136.5 million from the \$175 million set-aside in the budget year for IST solutions and an additional \$130 million ongoing to the creation or expansion of permanent community-based treatment programs for felony IST patients. These resources will support a robust per-patient rate, non-treatment costs of managing community-based programs, transitional housing support for IST defendants released

directly from custody, and substantial technical assistance resources for participating counties.

Counties will receive \$125,000 per felony IST client treated in either a CBR or Diversion program. This rate is intended to support an intensive community treatment model with increased frequency of clinical contacts and access to psychiatry services, as well as all wrap-around services, and housing costs for an average 18-month length of stay. In addition, this rate is intended to support the use of both forensic peer specialists and partnerships with county probation departments to increase treatment engagement and success in community programs.

DSH acknowledges that County costs for establishing and maintaining this programming goes beyond the direct costs of care for the clients. Ongoing new funding is also included to assist counties with the additional costs incurred by the county implementers and stakeholders involved in planning and running these programs. Funds will be allocated based on the county's baseline number of actual IST referrals, and can be used by counties to pay for expenses such as a community care coordinator to facilitate client placement, a forensic evaluator, additional positions for the District Attorney and Public Defender offices, pre-trial probation services, additional Public Guardian services, and data collection activities. In addition to this allocation, every participating county will receive \$100,000 per year to support local behavioral health and justice stakeholder collaborative efforts to identify solutions that target the overall reduction of felony IST commitments in their county.

DSH also proposes to work with counties to explore opportunities for transitional placement services to support client housing needs if an IST is restored in jail and released back to the community. The goal is to facilitate a smooth community transition and allow time for the county's coordination of benefits and qualified services.

Finally, \$6 million ongoing is included for robust technical assistance for counties, an external program evaluation of the community programs established, and resources for DSH to provide administrative and clinical support to the community programs. These components are intended to fully support counties in effectively managing the treatment of felony ISTs in their communities through workforce development initiatives, clinical and psychopharmacological support and training, and data-driven decision-making.

### **Increased Placements to CONREP and Transitions to County Services**

\$433,000 (\$1.2 million ongoing) is included to pilot a new independent placement determination panel to increase the number of individuals served in the community via Conditional Release Program (CONREP). This new panel will revise the Community Program Director (CPD) role as part of CONREP and improve the assessment process for patients who are committed to DSH as Not Guilty by Reason of Insanity (NGI) or as an Offender with Mental Health Disorder (OMD). The overall increased utilization of CONREP will free beds in the state hospitals. While CONREP CPDs will continue to be responsible for placement determinations of ISTs prior to DSH commitment, future consideration will be made to revise this responsibility and pilot an independent evaluation model for IST placement determinations.

### **Felony IST Growth and County Share of Costs**

These investments support the goal of providing care in the least restrictive, community-based settings while maintaining public safety. The growing number of county IST referrals is largely driven by insufficient appropriate community treatment services which leads to under or untreated individuals with serious mental illnesses being increasingly involved in the justice system. To ensure that the expansion of DSH funded community-based care does not create unintended incentives that drive additional IST referrals, the state will implement a growth cap that will include a county cost sharing methodology if the growth cap is exceeded.

DSH proposes to set each county's referral cap at the total number of felony ISTs committed to DSH in the current fiscal year (FY 2021-22). If counties exceed their baseline referral rate, they will be responsible for a portion of treatment costs for IST patients that are referred above their baseline. The total share of cost of care will be based on the treatment location for each IST patient (DSH in-patient or community-based programs) and will apply to all counties, regardless of whether they contract with the department for community-based programming.

## Proposal Funding Summary

| <i>(Dollars in Thousands)</i>   |                  |                   |
|---|------------------|-------------------|
| <b>Program Costs</b>  | <b>CY</b>        | <b>BY Ongoing</b> |
| <b>Early Stabilization and Community Care Coordination</b>                                      |                  |                   |
| Stabilization and Early Access Treatment  | \$ 24,900        | \$ 66,800         |
| Care Coordination and Waitlist Management   | \$ 1,700         | \$ 4,900          |
| <b>Subtotal, Stabilization and Community Care Coordination</b>                                  | <b>\$ 26,600</b> | <b>\$ 71,700</b>  |
| <i>Funding - IST Solutions \$75M &amp; \$175M</i>   | \$ 26,600        | \$ 38,500         |
| Additional Funding Needed   | \$ -             | \$ 33,200         |
| <b>Expanding Felony IST Community Programming via Diversion and Community Based Restoration</b> |                  |                   |
| Housing Augmentation for Current Diversion Contracts  | \$ 60,000        | \$ -              |
| Felony IST Residential Housing Infrastructure Investments - 5,000 CBR or Diversion Beds         | \$ 6,400         | \$ 233,000        |
| Felony IST Community Program Funding for CBR or Diversion Clients                               | \$ -             | \$ 266,500        |
| <b>Subtotal, Expand Community Capacity</b>  | <b>\$ 66,400</b> | <b>\$ 499,500</b> |
| <i>Existing Diversion and CBR Authority</i>   | \$ 18,000        | \$ 46,000         |
| <i>Funding - IST Solutions \$75M &amp; \$175M</i>   | \$ 48,400        | \$ 136,500        |
| Additional Funding Needed   | \$ -             | \$ 317,000        |
| <b>Increased Placements to CONREP and Transitions to County Services</b>                        |                  |                   |
| Increased CONREP Placements   | \$ -             | \$ 433            |
| <b>Subtotal, Increased CONREP Placements and Transition Services</b>                            | <b>\$ -</b>      | <b>\$ 433</b>     |
| <i>Funding - IST Solutions \$75M &amp; \$175M</i>   | \$ -             | \$ -              |
| Additional Funding Needed   | \$ -             | \$ 433            |
| <b>Total, DSH IST Solutions Proposal</b>  |                  |                   |
| <b>Total, DSH IST Solutions Proposal</b>  | <b>\$ 93,000</b> | <b>\$ 571,000</b> |
| <i>Existing Diversion and CBR Authority</i>   | \$ 18,000        | \$ 46,000         |
| <i>Funding - IST Solutions \$75M &amp; \$175M</i>   | \$ 75,000        | \$ 175,000        |
| Total Additional Funding  | \$ -             | \$ 350,000        |