



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

April 14, 2020

Action Requested

Please Review

To

Presiding Judges of the Superior Courts

Deadline

N/A

From

Marsha G. Slough, Chair
Executive and Planning Committee
Kyle S. Brodie, Chair
Technology Committee
Marla O. Anderson, Chair
Legislation Committee
Harry E. Hull, Jr., Chair
Rules Committee

Contact

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Subject

Advisory to Courts in Responding to Individuals
With Behavioral Health Issues During the
COVID-19 Pandemic

Thank you for your continued commitment to ensuring that the people of California have access to justice in these extremely difficult times. This advisory is intended to assist the courts in responding to both criminal and civil cases involving individuals struggling with behavioral health issues.

State and local entities have taken actions that directly impact this population since Governor Gavin Newsom declared a state of emergency on March 4, 2020, in response to the COVID-19 pandemic. The Department of State Hospitals has issued directives suspending the admission and release of Lanterman-Petris-Short (LPS) Act and Incompetent to Stand Trial (IST) patients

committed to their facilities.¹ Many sheriffs have released inmates from custody to try to reduce the spread of COVID-19 in the local jails. The Judicial Council has adopted a statewide emergency bail schedule that sets bail at \$0 for many misdemeanors and low-level felonies.² All courts have suspended some part of their operations in order to protect the health and safety of the public, as well as court staff.

During these unprecedented times, courts can take steps to protect the legal and constitutional rights and support the health and well-being of involuntarily detained or committed individuals with behavioral health issues without placing the health and safety of judicial officers and court staff at risk. Persons detained or committed to hospitals and other treatment facilities because of behavioral health issues continue to rely on the courts for expeditious determinations involving their release, placement, and care. The treatment and housing needs of these very vulnerable populations must be addressed to mitigate the risks to public safety and public health. Alternatives to state hospital placement should be sought for those who are awaiting placement or pending hearing. As provided in emergency rule 3 of the California Rules of Court, adopted by the Judicial Council on April 6, 2020, technology should be used to facilitate remote proceedings whenever possible.³

Many courts have prioritized certain critical hearings related to mental health, including certification review hearings, writs of habeas corpus, and *Riese* capacity hearings for involuntarily detained persons. These practices are essential, and all courts should make these hearings a high priority.

To enable courts to focus their resources on immediate and critical needs, protect the legal rights and access to care of persons with behavioral health disorders, and ensure the health and safety of judicial officers, court staff, and all court users, we strongly encourage courts to consider the following suggestions. Their implementation requires close collaboration with your local public health, mental health, social services, and justice system partners.

1. For defendants ordered to be placed in Department of State Hospitals facilities who are in county jail awaiting placement, consider alternative placements for treatment, as specified in Penal Code section 1370, and amend commitment orders, when appropriate.

¹ Department of State Hospitals, Department Directive on Suspension of Lanterman Petris Short Act Patient Admissions (Mar. 16, 2020), www.dsh.ca.gov/Treatment/docs/waiver_lps.pdf.

² See emergency rule 4 in Appendix I, Amendments to the California Rules of Court, www.courts.ca.gov/documents/appendix-i.pdf.

³ Appendix I, Amendments to the California Rules of Court, www.courts.ca.gov/documents/appendix-i.pdf.

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2. Prioritize holding the mental health hearings required by Welfare and Institutions Code sections 4800–4801, 5256, 5275–5276, and 5334 in accordance with statutory time requirements and procedural safeguards, and hold those hearings remotely, as provided in emergency rule 3.
3. To the extent possible, collaborate with justice system partners including jails, custodial and community treatment providers, and other stakeholders to develop appropriate release and discharge plans.
4. To the extent possible, conduct hearings on petitions to establish or renew mental health conservatorships under the LPS Act remotely, as provided in emergency rule 3.

Thank you very much for your continued efforts to ensure access to justice for all Californians during this trying time.

cc: Court Executive Officers of the Superior Courts