



JUDICIAL COUNCIL OF CALIFORNIA

MENTAL HEALTH ISSUES
IMPLEMENTATION TASK FORCE

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MENTAL HEALTH ISSUES IMPLEMENTATION TASK FORCE

MINUTES OF OPEN MEETING

June 12, 2014

10:00 a.m. 3:30 p.m.

Judicial Council Board Room,

455 Golden Gate Avenue, San Francisco, CA

Advisory Body Members Present: Hon Richard J. Loftus, Jr., Chair; Hon. Hilary A. Chittick, Hon. Susan M. Gill, Hon. Suzanne N. Kingsbury, Hon. Clifford L. Klein, Hon. Stephen V. Manley, Hon. Heather D. Morse, Hon. Jaime R, Román, Hon. Maria E. Stratton, Hon. Garrett L. Wong

Advisory Body Members Absent: Hon. Rogelio R. Flores, Hon. Kurt E. Kumli, Mr. Michael D. Planet, Mr. Michael M. Roddy, Hon. Michael Anthony Tynan

Others Present: Ms. Nancy Taylor and Ms. Karen Moen, lead staff; Mr. Curt Child, Ms. Charlene Depner; Ms. Danielle McCurry, Ms. Angelica Souza, Ms. Charina Zalzos, Ms. Carrie Zoller; Mr. Daniel Pone and Ms. Sharon Reilly (OGA)

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:00 a.m, and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the March 7, 2014, April 15, 2014, and April 24, 2014, Mental Health Issues Implementation Task Force meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1-7)

Item 1

Legislative Updates:

Mr. Daniel Pone and Ms. Sharon provided a status report on the following bills: AB 1014, AB 1340, AB 1847, AB 1925, AB 2086, AB 2098, AB 2186, AB 2190, AB 2266, AB 2543, AB 2625, SB 1054, SB 1110, SB 1227, and SB 1412.

Action: Information only; no action taken.

Item 2

Juvenile Competency Working Group Update:

Ms. Carrie Zoller advised members of current issues in juvenile competency/mental health and reported that a Juvenile Competency Working Group had been formed with representatives from the Mental Health

Issues Implementation Task Force and the Collaborative Justice Courts and Family/Juvenile Law Advisory Committees. The working group will meet on June 19, 2014 to begin discussing options for addressing juvenile competency/IST issues and will return recommendations to all three advisory bodies for their input by in the late fall/winter.

Action: no action taken.

Item 3

Other Updates:

1. Judge Manley announced that the Council on Mentally Ill Offenders held a reorganization meeting and staffing issues still must be resolved.
2. Judge Manley announced that the California Association of Drug Court Professionals (CADCP) is now the California Association of Collaborative Courts (CACC). Judicial officer participation in the organization is important whether as faculty for training or engaged in membership and leadership activities. CACC provides training and technical assistance for collaborative courts throughout the state of California and disseminates information about evidence-based practices and guidelines for collaborative court programs.
3. Judge Klein reported that the District Attorney in Los Angeles, Jackie Lacey, has formed a local task force to explore ways to improve outcomes for mentally ill offenders in Los Angeles County. The first summit meeting was well attended and work will continue on the project.

Action: no action taken.

Item 4

Education Subcommittee Update

1. Judge Roman reported that over 20 bench note guides as well as a mental health power point and mental health guide for judges have been developed by task force members and will be provided in an electronic format by CJER's toolkits by late summer. All have been authored and peer-reviewed by task force members and will be reviewed and updated (if necessary) annually by the authors.
2. Karen Moen reported the Mental Health Network Listserve will be updated for use by late summer (target date: August 29, 2014)
3. Karen Moen and Danielle McCurry reported that CJER On-Line will be active by late July.

Action: no action taken.

Item 5

Review and Discussion of the Draft Final Report of the Mental Health Issues and Implementation Task Force

Judge Loftus, Nancy Taylor, and Carrie Zoller outlined the format and content of the draft report to the Judicial Council. It is anticipated that the report will go to the Judicial Council in July 2014.

Action: Task force members approved the draft Final Report of the Mental Health Issues and Implementation Task Force.

Item 6

Identifying Non-Criminal, Emerging and Crosscutting Mental Health and Related Issues in the Courts

Members of the task force identified the following as some of the critical or emerging opportunities related to mental health issues in the court system:

1. Increase funding, including both state and grant funding, for collaborative courts including juvenile and adult mental health courts. Increase legislature's awareness of the need for funding for collaborative courts including mental health treatment courts.
2. Provide support, through the Judicial Council to local courts in developing local protocols (under Rule of Court 10.951) and models that serve the needs of their local community and culture.
3. Develop best practice guidelines for cross-over issues including crossover issues in juvenile, dependency, family, probate, and mental health and veterans treatment courts.
4. Provide support and training for self-help centers related to serving individuals with mental illness or related conditions.
5. Incorporate training about mental health/co-occurring disorder issues into training of judges and increase awareness of the need for similar training among justice system partners including probation officers and jail staff/sheriffs and other custody personnel including those who work in the prison system.
6. Increase mental health/co-occurring disorder-related training opportunities for judges and court staff.
7. Work with criminal justice partners, especially sheriffs and CDCR, to increase mental health treatment options for jail, prison, and parole populations and to increase awareness of the need for mental health training for jail and prison staff.
8. Work with juvenile and adult probation chiefs to increase mental health treatment options for juveniles and for adults on probation.
9. Identify ways to improve outcomes for juveniles with mental illness.
10. Increase misdemeanor treatment options.
11. Discuss whether the time has come for California's LPS statutes to be re-evaluated in light of new science and treatment tools related to mental illness.
12. Discuss mental health and firearm issues.
13. Incorporate mental health treatment information and best practices into responses for improving outcomes for parolees with mental illness including those parolees participating in re-entry court programs.
14. Promote collaborative justice/mental health court principles as evidence-based responses to improving outcomes for juveniles and adults with mental illness.

Action: Task force identification of critical or emerging issues.

Item 7

Discussion: Identifying and Prioritizing Criminal and non-Criminal Mental Health Work Going Forward: Work Products, Legislative Priorities, Rule of Court Priorities, Best Practices, Education, Partner Outreach, Other

1. Activate Mental Health Network Listserve.
2. Finalize and transfer mental health bench notes, scripts, guides, etc. to CJER-On Line.

3. Provide support for AB 2190 through the legislative process.
4. Develop judicial ethics course for judges serving in mental health courts
5. Provide education about changes to California Rules of Court 10.951 and 10.952 for judicial officers including presiding judges.
6. Develop model/sample mental health protocols for local courts including small courts with fewer treatment service options.
7. Provide input and support for juvenile competency legislation through the joint working group of the Family/Juvenile Law Advisory Committee, the Collaborative Justice Courts Advisory Committee and the Mental Health Issues Implementation Task Force.
8. Address the issues concerning the State Hospitals and the lengthy wait periods especially as it relates to access to justice issues.
9. Explore ways for the work of the Mental Health Issues Implementation Task Force to continue post-sunset.
10. Develop mental health toolkit for judicial officers (see CJER On-Line).

Action: Task force identification and prioritization of critical or emerging issues.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 3:30 p.m.

Approved by the advisory body on TBD.

Assembly Bill No. 2190

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1601, 1602, and 1603 of the Penal Code, and to amend Section 5354 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 2190, Maienschein. Criminal defendants: gravely disabled persons.

(1) Existing law prohibits outpatient status for a person who is charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of certain crimes, including, but not limited to, murder, mayhem, aggravated mayhem, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, until the person has actually been confined in a state hospital or other treatment facility for at least 180 days.

Existing law permits outpatient status, without first being confined in a state hospital or other treatment facility, for a person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described above, or found not guilty of any misdemeanor by reason of insanity, if specified conditions are met.

This bill would exempt from this 180-day prohibition cases where the court finds a suitable placement, including, but not limited to, an outpatient placement program, that would provide the person with more appropriate mental health treatment and the court finds that the placement would not pose a danger to the health or safety of others.

(2) Existing law establishes other conditions under which the above-described persons are eligible for outpatient status, including, but not limited to, that both the director of the treatment facility and the community program director advise the court that the person no longer poses a danger and would benefit from outpatient status.

This bill would remove these conditions and would, instead, require that the court consider whether those advisements had been made, and would make conforming changes.

(3) Existing law, the Lanterman-Pertis-Short Act, authorizes the appointment of a conservatorship for a person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. Existing law requires the officer providing the conservatorship investigation to investigate all available alternatives to conservatorship and to recommend conservatorship to the court only if no suitable alternatives are available, and to render a written report to the court. Existing law authorizes a court to order a person alleged, as a result of mental disorder, to be a danger to others, or to himself or herself, or to be gravely disabled, to be given an evaluation of his or her condition.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would, when a court with jurisdiction over a person in a criminal case orders an evaluation of the person's mental condition, and that evaluation leads to a conservatorship investigation, require the officer providing the conservatorship investigation to serve a copy of the report on the defendant or the defendant's counsel.

The bill would require the investigating officer, upon the prior written request of the defendant or the defendant's counsel, to submit a copy of the report to the court hearing the criminal case, the district attorney, and the county probation department. The bill would require that the conservatorship investigation report and the information contained therein be kept confidential and not be further disclosed to anyone without the prior written consent of the defendant. The bill would, with certain exceptions, require that after disposition of the criminal case, the court place all copies of the report in a sealed file. By increasing the duties of local officials, this bill would impose a state-mandated local program.

This bill would make legislative findings to the effect that any limitation on the public's right of access to the report is outweighed by the need to protect the privacy interests of the proposed conservatee and to prevent the chilling effect that would result from disclosure.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by

the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other treatment facility for 180 days or more after having been committed under the provisions of law specified in Section 1600, unless the court finds a suitable placement, including, but not limited to, an outpatient placement program, that would provide the person with more appropriate mental health treatment and the court finds that the placement would not pose a danger to the health or safety of others, including, but not limited to, the safety of the victim and the victim's family.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual

confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 2. Section 1602 of the Penal Code is amended to read:

1602. (a) Before any person subject to the provisions of subdivision (b) of Section 1601 may be placed on outpatient status, the court shall consider all of the following criteria:

(1) In the case of a person who is an inpatient, whether the director of the state hospital or other treatment facility to which the person has been committed advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, and will benefit from such outpatient status.

(2) In all cases, whether the community program director or a designee advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, will benefit from such status, and identifies an appropriate program of supervision and treatment.

(b) Prior to determining whether to place the person on outpatient status, the court shall provide actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a hearing at which the court may specifically order outpatient status for the person.

(c) The community program director or a designee shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 15 calendar days after notification by the court to do so, except that in the case of a person who is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after notification by the court to do so.

(d) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

SEC. 3. Section 1603 of the Penal Code is amended to read:

1603. (a) Before any person subject to subdivision (a) of Section 1601 may be placed on outpatient status the court shall consider all of the following criteria:

(1) Whether the director of the state hospital or other treatment facility to which the person has been committed advises the committing court and the prosecutor that the defendant would no

longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) Whether the community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(b) (1) Prior to release of a person under subdivision (a), the prosecutor shall provide notice of the hearing date and pending release to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed with the court, and after a hearing in court, the court shall specifically approve the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

(2) In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(c) The community program director shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 30 calendar days after notification by the court to do so.

(d) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

SEC. 4. Section 5354 of the Welfare and Institutions Code is amended to read:

5354. (a) The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from

the person's family members, close friends, social worker, or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he or she shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

(b) Notwithstanding Section 5328, when a court with jurisdiction over a person in a criminal case orders an evaluation of the person's mental condition pursuant to Section 5200, and that evaluation leads to a conservatorship investigation, the officer providing the conservatorship investigation shall serve a copy of the report required under subdivision (a) upon the defendant or the defendant's counsel. Upon the prior written request of the defendant or the defendant's counsel, the officer providing the conservatorship investigation shall also submit a copy of the report to the court hearing the criminal case, the district attorney, and the county probation department. The conservatorship investigation report and the information contained in that report, shall be kept confidential and shall not be further disclosed to anyone without the prior written consent of the defendant. After disposition of the criminal case, the court shall place all copies of the report in a sealed file, except as follows:

(1) The defendant and the defendant's counsel may retain their copy.

(2) If the defendant is placed on probation status, the county probation department may retain a copy of the report for the purpose of supervision of the defendant until the probation is terminated, at which time the probation department shall return its copy of the report to the court for placement into the sealed file.

SEC. 5. Pursuant to paragraph (2) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature finds and declares all of the following:

(a) Any limitations to public access to conservator investigation reports pursuant to subdivision (b) of Section 5354 of the Welfare and Institutions Code as proposed by this act are necessary to protect the privacy rights of the proposed conservatee pursuant to Section 1 of Article I of the California Constitution.

(b) The interests in protecting the privacy rights of the proposed conservatee in this situation strongly outweigh the public interest in having access to personally identifiable information about the person and his or her need for and access to mental health services. Moreover, protection of the person's privacy rights is necessary to prevent the chilling effect on access to needed mental health services that would occur if the information were to be made public.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2014

Governor

Mental Health Issues Implementation Task Force Work Products Transferred to CJER On-Line September 2014

The Mental Health Implementation Task Force, in consultation with the Center for Judicial Education and Research's (CJER) Criminal Law Education Committee, focused much of its effort on developing additional mental health-related educational resources for judges. A list of completed peer-reviewed educational products follows. (*Note: Additional work product development is underway and will be completed by December 2014.*)

Mental Health Issues Implementation Task Force Work Products

1. Bench Notes: Common Mental Health Court Calendar Dates (Wong)
2. Bench Notes: Common Mental Health Court Rulings (Wong)
3. Bench Notes: Faretta Request: Competency to Self-Represent (Wong)
4. Bench Notes: PC 1026.5(b): 2 Year Extension Hearing (Wong)
5. Bench Notes: PC 1027: Appointment and Reports (Wong)
6. Bench Notes: PC 1368: Procedure to Declare Doubt (Wong)
7. Bench Notes: PC 1370: Administration of Antipsychotic Medications (Wong)
8. Bench Notes: PC 1608-1609: Revocation Hearings (Wong)
9. Bench Notes: PC 2970: Petition for One Year Extension and PC 2972 Hearings (Wong)
10. Bench Notes: Sample Voir Dire Questions (Wong)
11. Bench Notes: Script for Entry of NGI Plea (Wong)
12. Bench Notes: Script for PC 1368-1369 (Wong)
13. Bench Notes: PC 1026: Sanity Restoration COT Hearing (Wong)
14. Bench Notes: Script NGI Pleas Withdraw and Stipulated Trial (Wong)
15. Sample Order: OSC to DSH Re Admissions Delay (Wong)
16. Sample Order: PC 1370(b) (1): Return Defendant from State Hospital (Wong)
17. Sample Order: PC 1372: Return Defendant from State Hospital (Wong)
18. Sample Order: Return Defendant from State Prison After Appeal (Wong)
19. Sample POS: For Order to Appeal and to Show Cause to DSH (Wong)
20. Roger S Hearings (Stratton)
21. Judges Mental Health Guide (Román)
22. Power Point: Mental Illness in the Courtroom (Gill)

Other Related Materials

23. PC 1170.9 Decision Map (for veterans under certain circumstances with mental illness, substance abuse disorders, PTSD, or mental illness) (Moore/Zoller; developed for the Veterans Working Group of the Collaborative Justice Courts Advisory Committee)