



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2013

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Outpatient Status for Mentally Disordered and Developmentally Disabled Offenders	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Pen. Code, §§ 1601–1603	Effective Date December 13, 2013
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Mental Health Issues Implementation Task Force Hon. Richard J. Loftus, Jr., Chair	Date of Report November 15, 2013
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Executive Summary

The Policy Coordination and Liaison Committee and the Mental Health Issues Implementation Task Force recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1601–1603 pertaining to outpatient status for mentally disordered and developmentally disabled offenders. The amendment to section 1601 would allow the court, when appropriate, to conditionally release a defendant found incompetent to stand trial to a placement in the community, rather than in a custodial or inpatient setting, to receive mental health treatment until competency is restored. Under the amended section, conditional release would be appropriate if the court finds that the alternative placement would provide more appropriate treatment for the defendant and that the placement would not pose a danger to the health and safety of others. The amendments to sections 1602 and 1603 would require the court to consider all listed criteria before placing an offender who is subject to section 1601 on outpatient status instead of requiring the court to find that all of the listed criteria have been met.

Recommendation

The Policy Coordination and Liaison Committee and the Mental Health Issues Implementation Task Force (MHIITF) recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1601(a), 1602(a) and (b), and 1603(a) pertaining to outpatient status for mentally disordered and developmentally disabled offenders who have been found incompetent to stand trial as follows:

- Amend section 1601(a) to allow the court, when appropriate, to conditionally release a defendant found incompetent to stand trial to the community, rather than to a custodial or inpatient setting if the court finds that an alternative placement would provide more appropriate treatment for the defendant and that the placement would not pose a danger to the health and safety of others.
- Amend sections 1602(a) and 1603(a) to require the court to consider all listed criteria before placing an offender who is subject to section 1601(a) or (b) on outpatient status, instead of requiring the court to find that all of the listed criteria have been met before placement on outpatient status. Renumber subsection 1602(a)(3) as 1602(b), and modify that subsection to clarify that, before determining whether to place a person on outpatient status, notice must be provided to the prosecutor and defense counsel and a court hearing held at which the court may specifically order outpatient status.

Previous Council Action

There is no relevant previous Judicial Council action to report.

Rationale for Recommendation

California's criminal courts serve a disproportionate number of mentally ill offenders. People with mental illness are more likely to be arrested than those in the general population for similar offenses, and many enter the criminal justice system as a direct result of untreated mental illness.

Former Chief Justice Ronald M. George established the Task Force for Criminal Justice Collaboration on Mental Health Issues (task force) in February 2008. The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve systemwide responses to offenders with mental illness. The task force issued its final report in April 2011.

In its final report, the task force recognized that, "... [c]ourts, in collaboration with state hospitals and local mental health treatment facilities, should create and employ methods that prevent prolonged delays in case processing and ensure timely access to restoration programs for defendants found incompetent to stand trial."¹ Consistent with this overarching principle, the task

¹ Judicial Council of Cal., Task Force Rep., *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (April 2011), p.27, http://courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf.

force included recommendation 36, which suggests modifying existing statutes “to give judicial officers hearing competency matters access to a variety of alternative procedural and dispositional tools.” The recommended tools include “jurisdiction to conditionally release a defendant found incompetent to stand trial to the community, when appropriate, rather than in a custodial or hospital setting, to receive mental health treatment with supervision until competency is restored.”²

In January 2012, Chief Justice Tani G. Cantil-Sakauye directed the MHIITF to develop a plan to implement the task force’s recommendations. The MHIITF has developed a proposal that will assist courts in ensuring that defendants who have been found incompetent to stand trial have timely access to restoration programs. Under the proposed legislation, courts would no longer be limited to placing defendants in custodial restoration programs. Instead, judicial officers would have the authority to release defendants into appropriate community settings to receive mental health treatment so long as the placement does not compromise public safety. Not only would this change allow people who could be successfully treated via a lower level of care to participate in a restoration program that is better suited to their needs, but as those defendants are receiving treatment elsewhere, additional space would become available for defendants who require a custodial setting.

Penal Code section 1601(a)³ currently prohibits a court from placing a defendant found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of certain enumerated offenses on outpatient status until that person has first been committed and then confined in a state hospital or other facility for at least 180 days. The proposed legislation would amend section 1601(a) to permit a court to place such an offender on outpatient status if the court finds a suitable placement, including an outpatient placement, that would provide the person with more appropriate mental health treatment than in a custodial setting, and that would not pose a danger to the health and safety of others. The proposed legislation would also amend sections 1602(a) and 1603(a) to require the court to consider all of the listed criteria before placing an offender who is subject to the provisions of 1601(a) or (b) on outpatient status, instead of requiring the court to find that all of those criteria have been satisfied before placement. This requirement would allow the judicial officer—with knowledge of the individual defendant, the facts of the case, and availability of local treatment options—to make a placement decision on a case-by-case basis.

Courts are already required to hold a hearing to address placement of the defendant; the proposed legislation would further provide for improved case handling for defendants with mental illness without placing additional burdens on the courts. The proposed legislation would encourage greater collaboration with justice system partners by fostering communication and coordination concerning appropriate placement options and would potentially result in better outcomes for

² *Id.* at p.29.

³ All statutory references are to the Penal Code.

mentally ill offenders by giving them timely access to appropriate mental health treatment programs.

Comments, Alternatives Considered, and Policy Implications

Public comments

The invitation to comment for this proposal was circulated from April 19, 2013, through June 19, 2013, to the standard mailing list for criminal, family, and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other legal professionals. The MHITF received four comments. Two commentators agreed with the proposal as circulated. One commentator agreed with the proposal subject to specified modifications. One commentator opposed the proposal. A chart with the full text of the comments and the task force's responses is attached at pages 9–10. Specifically:

- The Orange County Bar Association supported the proposal, noting that it would provide individuals found incompetent to stand trial access to appropriate and timely treatment.
- The Superior Court of San Diego County agreed with the proposal, indicating that the proposal would not compromise the safety of the community. The court also noted that the proposal could result in cost savings to trial courts because having more appropriate treatment options could more quickly restore a defendant's competency to stand trial. In addition, the court noted that some courts may choose to do competency review hearings on a special calendar and create forms for that purpose.
- The district attorney for the County of Marin and the Superior Court of Los Angeles County both expressed concern about applying the proposed legislation to higher-level criminal offenses. The district attorney opposed extending the options to anyone with an offense specified in Penal Code section 1601(a). The Superior Court of Los Angeles County, although praising the greater flexibility in placement options that the judicial officer would have under the proposed legislation, suggested that persons charged with a homicide, a violent sex offense, or inflicting great bodily injury continue to be confined in a state hospital or other facility for 180 days after commitment before being eligible for outpatient treatment. To help ensure adequate safeguards, the MHITF modified the proposed legislation to clarify that before determining whether to place a person on outpatient status, the court must provide actual notice to the prosecutor and defense counsel and hold a hearing at which the court may specifically order outpatient status. The revised language provides the court with the discretion to review the allegations and underlying facts on a case-by-case basis while still making a careful determination that incorporates public safety considerations.

Committee comments

After the comment period, the Criminal Law Advisory Committee provided feedback on the proposed legislation indicating its support of the proposal, explaining that the proposal would

enhance judicial discretion, provide more treatment alternatives, and authorize courts to make swifter, more effective orders.

Alternative actions considered and policy implications

The MHIITF considered postponing or declining to propose any legislative change in light of the significant adjustments that the criminal courts are undergoing as a result of public safety realignment. Nevertheless, the MHIITF ultimately determined that the cautious approach of the proposed legislation will assist courts in ensuring that defendants found incompetent to stand trial or not guilty by reason of insanity have timely access to restoration programs by providing courts with authority to release defendants into appropriate, supervised community settings to receive mental health treatment, so long as the placement does not compromise public safety. The proposed legislation also encourages greater collaboration with justice system partners by fostering communication and coordination concerning suitable placements options and provides for improved case handling for defendants with mental illness without placing additional burdens on the courts.

Implementation Requirements, Costs, and Operational Impacts

The MHIITF is proposing these legislative amendments based on its assessment that adoption of these changes, over time, will reduce costs incurred by courts and justice system partners in cases involving offenders with mental health issues or co-occurring disorders by providing defendants with more appropriate treatment, as determined on a case-by-case basis, that will restore the defendants' competency to stand trial in a timelier manner.

The Superior Court of San Diego County commented on the potential for initial implementation costs and noted that, “[i]f approved, [the proposal] would require the court to possibly create a specialty calendar for status/review hearings and modifications, which would increase the current workload. The court would need to modify various forms and minute orders, and provide some minimal training to staff.” However, the court noted that, “[i]deally, more appropriate treatment would restore the defendant’s competency to stand trial in a timelier manner, which would save the courts money.”

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed legislative amendments support the policies underlying Goal I, Access, Fairness, and Diversity—specifically, Goal I.4, which provides that the branch should “[w]ork to achieve procedural fairness in all types of cases.” The proposed legislative amendments also support the policies of Goal IV, Quality of Justice and Service to the Public—specifically Goal IV.3 and IV.4, respectively, which state the branch should “[p]rovide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes” and “[p]romote the use of innovative and effective problem-solving programs and practices that are consistent with and support the mission of the judicial branch.”

Attachments

1. Proposed amendments to Penal Code sections 1601–1603, at pages 7–8
2. Chart of comments, at pages 9–10

Sections 1601, 1602 and 1603 of the Penal Code are amended, effective January 1, 2015, to read:

1 **Penal Code Section 1601**

2 (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or
3 found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of
4 Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury,
5 robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great
6 bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2),
7 (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a)
8 of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which
9 the victim suffers great bodily injury, a violation of Section 288, a violation of Section 18715,
10 18725, 18740, 18745, 18750, or 18755 or any felony involving death, great bodily injury, or an
11 act which poses a serious threat of bodily harm to another person, outpatient status under this
12 title shall not be available until either (1) that person has actually been confined in a state
13 hospital or other treatment facility for 180 days or more after having been committed under the
14 provisions of law specified in Section 1600 or (2) the court finds a suitable placement, including,
15 but not limited to, an outpatient placement program, that would provide the person with more
16 appropriate mental health treatment and would not pose a danger to the health and safety of
17 others.

18 (b) * * *

19
20 **Penal Code Section 1602**

21 (a) Before any person subject to the provisions of subdivision (b) of Section 1601 may be placed
22 on outpatient status, ~~if all of the following conditions are satisfied:~~ the court shall consider the
23 following criteria:

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

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

31 ~~(b)(3) After~~ Before determining whether to place the person on outpatient status, the court shall
32 provide actual notice to the prosecutor and defense counsel, and after hold a hearing at which the
33 court may in court, the court specifically order approves the recommendation and plan for
34 outpatient status for the person.

35 ~~(c)-(d)~~ * * *

36
37 **Penal Code Section 1603.**(a) Before any person subject to subdivision (a) of Section 1601 may
38 be placed on outpatient status, ~~if all of the following conditions are satisfied:~~ the court shall
39 consider the following criteria:

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

1 be a danger to the health and safety of others, including himself or herself, while under
2 supervision and treatment in the community, and will benefit from that status.
3 (2) The community program director advises the court that the defendant will benefit from that
4 status, and identifies an appropriate program of supervision and treatment.
5 ~~(b)(3)~~ The prosecutor shall provide notice of the hearing date and pending release to the victim
6 or next of kin of the victim of the offense for which the person was committed where a request
7 for the notice has been filed with the court, and after a hearing in court, the court specifically
8 approves the recommendation and plan for outpatient status pursuant to Section 1604. The
9 burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's
10 current mailing address.
11 In any case in which the victim or next of kin to the victim has filed a request for notice with the
12 director of the state hospital or other treatment facility, he or she shall be notified by the director
13 at the inception of any program in which the committed person would be allowed any type of
14 day release unattended by the staff of the facility.
15 ~~(c)(b)~~–~~(d)(e)~~ * * *

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All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	County of Marin By Ed Berberian District Attorney San Rafael, California	N	The individuals that fall under the category of crimes identified in PC 1601(a) pose a high risk to public safety and need to be closely monitored before consideration for placement in the community occurs. These proposed amendments remove justified safeguards which already are minimal standards.	The task force modified the proposed legislation to clarify that notice must be provided to the prosecutor and defense counsel and that a court hearing be held at which the court can make a determination concerning whether to order outpatient status. The task force believes that the revised language provides the court with the discretion to review the allegations and underlying facts on a case-by-case basis, and make a careful determination that incorporates considerations of public safety.
2.	Orange County Bar Association By Wayne R. Gross President Newport Beach, California	A	The proposed amendment would meet its intended purpose of affording persons deemed incompetent to stand trial access to restoration programs at an appropriate level of care and in a more timely manner than is currently available due to the limitations of the statute as currently written.	No response required.
3.	Superior Court of Los Angeles County Los Angeles, California	AM	Currently, defendants in serious felony cases who are declared incompetent must be housed and treated in a State Hospital. This proposal would give greater flexibility to the judicial officer in ordering alternative placement, treatment and competency training in appropriate individual cases where no danger would be posed to public safety. The proposed modification should not apply to any defendant charged with a homicide, a violent sex offense (Welfare & Institutions	The task force modified the proposed legislation to clarify that notice must be provided to the prosecutor and defense counsel and that a court hearing be held at which the court can make a determination concerning whether to order outpatient status. The task force believes that the revised language provides the court with the discretion to review the allegations and underlying facts on a case-by-case basis, and make a careful determination that

LEG13-06**Outpatient Status for Mentally Disordered and Developmentally Disabled Offenders.**

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	Commentator	Position	Comment	Committee Response
			Code section 5600), or a crime in which the defendant inflicted great bodily injury on the victim. For those crimes, the 180 day in-hospital treatment period should still apply.	incorporates considerations of public safety.
4.	Superior Court of San Diego County By Mike Roddy Executive Officer San Diego, California	A	<p>We support the proposed legislation to amend Pen. Code § 1601(a) to allow the court to conditionally release a defendant found incompetent to stand trial to an alternative placement that could provide more appropriate treatment without compromising the health and safety of the community. Ideally, more appropriate treatment would restore the defendant's competency to stand trial in a timelier manner, which would save the courts money.</p> <p>If approved, this would require the court to possibly create a specialty calendar for status/review hearings and modifications, which would increase the current workload. The court would need to modify various forms and minute orders, and provide some minimal training to staff.</p>	No response required.