



COUNTY OF SAN BERNARDINO  
STANDARD PRACTICE

NO 9-1.12

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BY Robert Sawicky EFFECTIVE 07/94

DEPARTMENT BEHAVIORAL HEALTH

SUBJECT ADMISSION STANDARDS FOR PENAL CODE  
MISDEMEANOR VIOLATIONS

APPROVED

*James McReynolds*  
JAMES McREYNOLDS Director

**(REVIEWED 8/97)**

**I POLICY**

To establish procedures regarding the evaluation, treatment and placement of certain misdemeanor defendants in accordance with SB 485 (Chapter 722, Statutes of 1992).

**II. PURPOSE**

The purpose of these procedures will be to provide the Department of Behavioral Health (DBH) staff with proper guidance on matters pertaining to the evaluation and placement of certain misdemeanor defendants in accordance with SB 485 (Chapter 722, Statutes of 1992).

**III PROCEDURE**

A. If a misdemeanor defendant is found to be mentally incompetent pursuant to Penal Code Section 1368.1, the Court shall order the County Mental Health Director or designee to evaluate the defendant. The Misdemeanant Evaluator will prepare a written evaluation to the Court within 15 judicial days as to whether the defendant should be required to undergo outpatient treatment, or be committed to a treatment facility. Any placement recommendation to the Courts will be approved by the Program Manager prior to submission to the Courts. No person shall be admitted to a treatment facility or placed on outpatient status without having been evaluated by the County Mental Health Director or his designee (i.e., Misdemeanant Evaluator). No person shall be admitted to a State Hospital unless the County Mental Health Director finds that there is no less restrictive appropriate placement available and the County Mental Health Director has a contract with the State Department of Mental Health for these placements.

1. The SB485 evaluator shall consult with the appropriate ACSP staff prior to making a placement recommendation to the Court.
2. The designated ACSP "liaison" shall facilitate the actual placement and provide any follow-up case management services.

B. If the defendant is committed or transferred to a public or private treatment facility approved by the County Mental Health Director, the Court may, upon receiving the written recommendation of the County Mental Health Director, transfer the defendant to another public or private treatment facility approved by the County Mental Health Director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the Order of Transfer, a petition may be filed in the Court for a hearing, which shall be held if the Court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the Order of Transfer. The Court shall use

the same standards as are used in conducting probation revocation hearings pursuant to Penal Code 1203.2.

- C. Prior to making an Order of Transfer, the Court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the County Mental Health Director or his or her designee.
- D. Within 90 days of a commitment, the Medical Director of the treatment facility to which the defendant is confined shall make a written report to the Court concerning the defendant's progress toward recovery of mental competence and/or compliance with and/or response to treatment. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to Court, the County Mental Health Director, or designee, concerning the defendant's progress toward recover of mental competence and/or etc. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the Medical Director of the hospital or person in charge of the facility shall report in writing to the Court and the County Mental Health Director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the County Mental Health Director, or designee, on the defendant's progress toward recovery, and the County Mental Health Director, or designee, shall report to the Court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the Court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing Court shall order the defendant to be returned to the Court for proceedings pursuant to Paragraph (2) of Paragraph I below. The Court shall transmit a copy of its order to the County Mental Health Director or his or her designee.
- E.
  - (1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The Court shall notify the County Mental Health Director or his/her designee of the return and of any resulting Court Orders.
  - (2) Whenever any defendant is returned to the Court and it appears to the Court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the Court shall order the conservatorship investigator of the County of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the Superior Court in the County that ordered the commitment. The Court shall transmit a copy of the Order directing initiation of conservatorship proceedings to the County Mental Health Director or his or her designee and shall notify the County Mental Health Director or his or her designee of the outcome of the proceedings.

- F. The criminal action remains subject to dismissal pursuant to Penal Code 1385. If the criminal action is dismissed, the Court shall transmit a copy of the order of dismissal to the County Mental Health Director or his/her designee.
- G. If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.
- H. Every person committed to a State Hospital or other public or private mental health facility pursuant to the provisions of Penal Code 1370, 1370.01 or 1370.1, who escapes from or who escapes while being conveyed to or from a State Hospital or facility, is punishable by imprisonment in the County Jail not to exceed one year or in the state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.
- I. The Medical Director or person in charge of a State Hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Penal Code 1370, 1370.01, or 1370.1 shall promptly notify the Chief of Police of the city in which the hospital or facility is located or the Sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the Chief of Police or Sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the Court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.
- J. The commitment of the defendant, as described in Penal Code 1370 or 1370.01, exonerates his or her bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he or she may have deposited instead of bail, or gives, to the person or persons found by the Court to have deposited any money instead of bail on behalf of the defendant, a right to the return of that money.
- K. If the Medical Director of the State Hospital or other facility to which the defendant is committed, or the community Program Director, County Mental Health Director, or regional center Director providing outpatient services, determines that the defendant has regained mental competence, the Director shall immediately certify that fact to the Court.
- L. Upon the filing of a Certificate of Restoration, the defendant shall be returned to the committing court in the following manner:
1. A patient who remains confined in a State Hospital or other treatment facility shall be redelivered to the Sheriff of the county from which the patient was committed. The Sheriff shall immediately return the person to the Court for further proceedings. The patient who is on outpatient status shall be returned to the Court through arrangements made by the outpatient treatment supervisor. In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a Certificate of Restoration. The State shall only pay for 10 State Hospital days for patients following the filing of a Certificate of Restoration of Competency.
- M. If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1

(commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Penal Code 1370, the conservator shall certify that fact to the Sheriff and District Attorney of the county in which defendant's case is pending, defendant's attorney of record, and the committing court

- N. When a defendant is returned to Court with a certification that competence has been regained, the court shall notify either the Community Program Director, the County Behavioral Health Director, or the Regional Center Director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the Court to have recovered competence
- O. Where the committing Court approves the Certificate of Restoration to Competence as to a person in custody, the Court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. Where the Superior Court approves the Certificate of Restoration to Competence regarding a person on outpatient status, unless it appears that the person has refused to come to Court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in Court for further proceedings. Where the person has refused to come to Court, the Court shall set bail and may place the person in custody until bail is posted.
- P. A defendant subject to either Paragraph O or P who is not admitted to bail or released under Paragraph S may, at the discretion of the Court, upon recommendation of the Director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community Program Director, the County Mental Health Director, or the Regional Center Director. The recommendation submitted to the Court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed. All efforts are to be made to ensure that any individual retained under this section be placed in the least restrictive setting possible.

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