SMICA
SERIOUS MENTAL ILLNESS
CALIFORNIA ADVISER

Glossary of Legal Terminology: Clinician Focus

Inpatient & High-Security Settings

State Hospital (SH): Primary maximum-security forensic facilities for patients needing the highest level of care.

Jail-Based Competency Treatment (JBCT): Specialized competency treatment inside county jails. Clinicians here provide similar restoration services as a state hospital but within the jails.

- **Admission, Evaluation, and Stabilization (AES) Center:** A specific intake hub where IST patients are triaged. They are either restored quickly or stabilized for transfer to a State Hospital.

Step-Down & Community Settings

Community Inpatient Facility (CIF): Also known as IMDs/Sub-acute programs. These are community-based locked facilities (Mental Health Rehabilitation Centers, Acute Psychiatric Hospitals) that provide a level of treatment between the SH and community restoration programs on the DSH continuum of care. CIFs also serve as a step-up option for brief stabilization services for NGRIs and OMDs receiving outpatient services through the Conditional Release Program (CONREP).

Community Based Restoration (CBR): A program for felony ISTs who are stable enough to receive restoration services in the community (outpatient or residential).

DSH Diversion: A DSH funded program operated by a county that provides a legal off-ramp where a Felony IST patient's criminal charges are put on hold while they receive treatment. If they complete the program (typically 2 years), the charges are dismissed.

Conditional Release Program (CONREP): A supervised forensic outpatient treatment program for patients who are no longer a danger but still need intensive clinical monitoring after release from a state hospital setting. Patients can be admitted directly to CONREP or stepped down from the state hospital.

- **Forensic Assertive Community Treatment (FACT):** An intensive, "wraparound" outpatient model used to support IST, NGRI and OMD individuals in the community through CONREP.

EASS (Early Access and Stabilization Services): A DSH funded program providing substantive psychiatric services in the form of early access to treatment and stabilization in the jail *before* the patient is admitted to a JBCT or State Hospital.

SMICA
SERIOUS MENTAL ILLNESS
CALIFORNIA ADVISER

Legal Standards and Commitments

Statute: A law enacted by the legislative branch of a government

California Penal Code: Collection of statutes for California criminal law that define what constitutes a crime and establishes the legal procedures for how the state handles people charged with crimes. Below are relevant definitions and commitment types.

- **Mentally incompetent (PC 1367):** A defendant is mentally incompetent if, as a result of a mental health disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner (based on the *Dusky v. United States* Supreme Court case).
- **IST (Incompetent to Stand Trial / PC 1370):** Provides the process to determine if it is in the interests of justice to restore an IST individual, whether to refer that individual to diversion or for restoration on the DSH continuum of care, determination for involuntary medication, lays out the requirements for court reports, and mandates that the maximum commitment period is for two years.
- **NGRI (Not Guilty by Reason of Insanity / PC 1026):** Patients judged by the court to be not guilty because they were insane at the time of the felony crime are committed to a state hospital for treatment for a period equal to the maximum sentence of their most serious offense. However, if the court finds that the sanity of the patient has been restored, the court may release the patient prior to reaching the maximum sentence.
- **OMD (Offender with a Mental Health Disorder / PC 2962):** Parolees who committed one of a specified list of crimes and who were treated for a severe mental disorder connected to their original crime can be committed to a state hospital as a condition of parole for a period not to exceed the length of their parole term.
- **MDO (Mentally Disordered Offender Certification Process / PC 2972):** If an OMD continues to require treatment at the end of their parole term, they may be involuntarily civilly committed under PC 2972. The commitment petition must be filed by the District Attorney and, if granted, extends treatment for one year. To continue the commitment beyond that period, the District Attorney must seek annual renewals through the court process.
- **PC 2964 Placement & Parole Supervision:** Requires that individuals meeting MDO criteria be treated by the Department of State Hospitals (DSH) as a condition of parole; it mandates that treatment be provided in an inpatient facility unless the DSH certifies to the Board of Parole Hearings that the individual can be safely and effectively treated in an outpatient program (Forensic Conditional Release Program or CONREP).
- **Mentally Ill Prisoners Transferred from Prison (PC 2684):** Legal mechanism for transferring a sentenced prisoner to a state hospital that is used when a prisoner's mental health needs are better served in a SH setting. This includes a subclass of patients referred to as "Coleman Patients" that a federal court case mandates that DSH serve.

Welfare and Institutions Code (WIC): Extensive collection of statutes specifying how California manages individuals who have mental health needs, disabilities and/or require additional protections.

Sexually Violent Predators (SVP) (WIC section 6600): SVP means a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior and is committed to DSH for treatment for an indeterminate period.

Lanterman-Petris-Short (LPS) Conservatorship (WIC Section 5300): Individual is "gravely disabled" defined as a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

Murphy Conservatorship (WIC 5008(h)(1)(B)): A specific conservatorship for IST patients with violent felony charges who remain mentally incompetent and gravely disabled. Individual is "gravely disabled" defined as a condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code; also requires existing complaint, indictment, or information pending against a person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well being of another person; the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder. **WIC 5328**: protects patient's privacy (takes precedence over HIPAA) and allows clinicians to communicate with the court.

Welfare and Institutions Code (WIC) 5328: Mandates the confidentiality of all information and records obtained while providing mental health services. It generally prohibits the disclosure of these records unless a specific statutory exception applies, such as for health care operations or through a court order. In the context of the Department of State Hospitals (DSH), WIC 5328(a)(25) specifically allows for the sharing of health records with business associates (like hospitals or healthcare providers) or other entities for health care operations in compliance with HIPAA.

Welfare and Institutions Code (WIC) 5325: Mandates protected entitlements for all voluntary and involuntary patients, including the right to keep personal belongings, reasonable access to phones/mail/visitors, the right to refuse convulsive treatment, and the right to contact a Patient Rights Advocate.

- Welfare and Institutions Code (WIC) 5325.1: Establishes that patients retain all constitutional and statutory rights not specifically limited by law, requiring that treatment be provided in the least restrictive environment and in a manner that protects personal liberty, dignity, and freedom from unnecessary restraint or harm.

Forensic Roles

Public Defender / Defense Counsel: The attorney representing the defendant.

Conservatorship Investigator: A county official (usually from the Public Guardian's office) who investigates whether a patient meets the "Gravely Disabled" or "Murphy" criteria to be placed under a conservatorship.

District Attorney (DA): The prosecutor representing the people/state.

Forensic Coordinator: The hospital staffer who manages the flow of court dates and reports.

- **Forensic Evaluator:** The court-appointed evaluator (psychologist or psychiatrist) who will evaluate a defendant's competency to stand trial.
- **Patient Rights Advocate:** An individual who supports the rights of patients and has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.
- **Independent Placement Panel (IPP):** Team of forensic psychologists and experts who conduct independent evaluations to determine if a patient is ready for the Conditional Release Program (CONREP)

SMICA
SERIOUS MENTAL ILLNESS
CALIFORNIA ADVISER

Involuntary Medication

Involuntary Medication Order (IMO): An order granted by a court that authorizes antipsychotic medication to be administered involuntarily, as needed, under the direction and supervision of a licensed psychiatrist. The main criteria in making a recommendation for an IMO (1370 statute):

- The individual lacks the capacity to make decisions regarding their antipsychotic medications, and
- The individual's mental disorder requires treatment with antipsychotics, and
- If not treated with antipsychotic medications, there is a probability of serious harm to the individual's physical or mental health.
    - Probability of serious harm is shown by:
        - o The individual is presently suffering adverse effects, or
        - o The individual previously suffered these effects and the person's condition is substantially deteriorating.
- The individual is a danger of physical harm to others

PC 1370(a)(2)(B)(ii)(III) (Sell Order): An involuntary medication order for defendants that meet the following criteria:

- The defendant has capacity to make decisions regarding treatment with antipsychotic medications and is not a danger to others.
- The people have charged the defendant with a serious crime against the person or property
- The involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is medically necessary and appropriate in light of their medical condition.

Involuntary Medication in Jails (PC 2603): Statute that provides legal authority and due process for the administration of involuntary psychiatric medication to inmates in county jails. This order is issued by a judge if a psychologist or psychiatrist determines that because of a serious mental disorder, the person is gravely disabled and does not have the capacity to refuse treatment with antipsychotic medications; or is a danger to self or others.

Forensic Clinical Concepts

Malingering: The intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding work, obtaining financial compensation, or evading criminal prosecution. Many tools (e.g., Structured Interview of Reported Symptoms (SIRS)-2, Test of Memory Malingering (TOMM)) can be used to screen for malingering.

Documentation

Initial 90-Day Competency Report: Statute requires that within 90 days of commitment to DSH, the Medical Director of the state hospital or designee shall make a written report concerning the defendant's progress toward recovery of mental competence.

Competency Progress Reports: Subsequent updates required every 180 days or until a defendant becomes competent

Certificate of Restoration (PC 1372): The official legal document filed by the clinician/Medical Director stating the defendant is now competent.

Maximum Term Commitment Report: Statutory document that serves as the legal expiration notice for a patient's time in a treatment facility. This prevents indefinite detention by ensuring the court is notified when the patient has reached the legal limit of their commitment without being restored to competency. This must be submitted to the court 90 days before the patient reaches their maximum commitment date (MCD).

- **Maximum Commitment Date (MCD):** The date the patient's legal commitment ends; they must be restored, released, or conserved by this time.

EIST (Enhanced IST): A court order (1372e) that keeps a restored patient in the hospital to maintain stability and competency while their criminal trial proceeds.

No Substantial Likelihood (NSL) Report: A report filed when a clinician believes there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future. The committing county may subsequently pursue a Murphy or LPS conservatorship.

Court Process

Complaint: A document sworn to by a victim or police officer that sets forth a criminal violation and serves as the charging instrument by which charges are filed and judicial proceedings are commenced against a defendant.

Indictment: A formal written statement framed by a prosecuting authority and found by a grand jury that charges a person with an offense.

Information: an instrument containing a formal accusation of a crime; issued by a prosecuting officer and serves the same function as an indictment issued by a grand jury.

Arraignment: The formal reading of a defendant's charges by a magistrate or judge. The defendant may choose to enter a plea of guilty, not guilty, or another plea allowed by law (e.g., nolo contendere).

Competency Hearing: Hearing specifically to determine if defendant meets the Dusky standard. This happens before any treatment for restoration begins. The judge or jury reviews competency evaluations to determine if defendant is mentally competent to stand trial. If found IST, the criminal case is suspended and the patient is committed to the DSH, another inpatient facility, or outpatient restoration.

Restoration Hearing: Hearing after a clinician files a certificate of restoration. The judge must approve the certificate for the criminal case to be unsuspended. If the DA or defense counsel challenges the report, clinicians may be called to testify about the patient's performance in mock trials or medication compliance.

Parole Revocation Hearing: Hearing to decide if a person on parole has violated their terms or committed a new crime. If violation is due to mental health relapse, the outcome may be a transfer back to a psychiatric program.

DSH Supporting Material

- Felony Incompetent to Stand Trial Commitment Process and Pathways
- Commitment Code Brochure
- Involuntary Medication Order Toolkit for Justice System Professionals and treatment Providers
  https://www.dsh.ca.gov/Treatment/Forensic_Commitments.html
  https://dshcagov-test.azurewebsites.net/newCommunityPrograms.html
- https://www.dsh.ca.gov/Treatment/docs/DSH_IST_1370_Process.pdf

Additional References

American Psychiatric Association. (2022). *Diagnostic and statistical manual of mental disorders* (5th ed., text rev.). https://doi.org/10.1176/appi.books.9780890425787

Merriam-Webster. (2016). *Merriam-Webster's dictionary of law*.

Funding for SMI CalAdviser was made possible by the State of California Department of State Hospitals (DSH) (the Department), but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department.