California Department of State Hospitals

State of California
Incompetent to Stand Trial
Solutions Work Group

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IST Solutions Workgroup

AB 133 (2021) established a statewide workgroup led by the California Health and Human Services Agency to identify short, medium and long-term solutions for the statewide felony Incompetent to Stand Trial (IST) crisis.

- Convened August – November 2021
- Required to submit solutions to the Department of Finance by November 30, 2021.
  - Total workgroup and external stakeholder recommendations: 41
  - Recommendations under implementation or proposed for implementation by DSH: 16
  - Report of recommendations released 11/30/2021:

https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf

For more information visit: https://www.chhs.ca.gov/home/committees/ist-solutions-workgroup/

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Members

Chair: **Stephanie Clendenin**, Director, California Department of State Hospitals (DSH)

Members:

- **Stephanie Welch**, Deputy Secretary of Behavioral Health, California Health and Human Services Agency
- **Nancy Bargmann**, Director, California Department of Developmental Services
- **Adam Dorsey**, Program Budget Manager, California Department of Finance
- **Brenda Grealish**, Executive Officer, Council on Criminal Justice and Behavioral Health, California Department of Corrections and Rehabilitation, Office of the Secretary
- **Tyler Sadwith**, Assistant Deputy Director, Behavioral Health, California Department of Health Care Services
- **Brandon Barnes**, Sheriff, Sutter County Sheriff's Office
- **John Keene**, Chief Probation Officer, San Mateo County & President-Elect, Chief Probation Officers of California
- **Stephanie Regular**, Assistant Public Defender, Contra Costa County Public Defender Office & Co-Chair of the Mental Health Committee of the California Public Defender Association
- **Veronica Kelley**, Director, San Bernardino County Department of Behavioral Health & Board President, California Behavioral Health Directors Association
- **Farrah McDaid Ting**, Senior Legislative Representative, Administration of Justice, California State Association of Counties (CSAC)
- **Scarlet Hughes**, Executive Director, California Association of Public Administrators, Public Guardians and Public Conservators
- **Jessica Cruz**, Executive Director, National Alliance of Mental Illness – California
- **Pamila Lew**, Senior Attorney, Disability Rights California
- **Francine Byrne**, Judicial Council of California
- **Jonathan Raven**, Chief Deputy District Attorney, Yolo County

Workgroup Goals:

- Meaningful, actionable, and sustainable solutions that:
  - Improve the lives of individuals with serious mental illness
  - Break the cycle of criminalization
  - Reduce the number of individuals found IST on felony charges (FIST)
  - Facilitate timely access to treatment in the appropriate setting for those who become FISTs
  - Advance alternatives to state hospitalization

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Pressures Leading to Workgroup

- Year-over-year increases in Incompetent to Stand Trial (IST) commitments
  - As of February 2022, over 1900 ISTs on the waitlist
- Increase in referrals continue to outpace all capacity growth and systems improvement
  - 1,380 new beds for IST treatment as of FY 2020-21
  - Reduced Average Length of Stay
  - Established Patient Management Unit
  - Legislative Changes
- *Stiavetti v. Clendenin:* substantive treatment within 28 days of commitment to DSH

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Who Are Felony ISTs?

- Individuals with serious mental illnesses
- Accused of felony crimes, but due to their mental illness unable to understand the charges against them or assist their counsel in their defense.
- Courts determine whether an individual is IST and then orders them to DSH for treatment.
- Majority are experiencing homelessness at the time of their arrest
- They often have not accessed any Medi-Cal specialty mental health services in the 6 months prior to their arrest.
- They are cycling in and out of the criminal justice system (nearly half had 15 or more prior arrests)

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What Happens After IST Treatment?

- Returned to the jail and court to proceed with their case
- Outcomes after returning to court:
  - ~76% remain at the county level -
    - 26% - Case dismissed or acquitted
    - 28% - Convicted – Probation/Jail
    - 14% - Convicted – Jail Sentence
  - ~24% were either committed to DSH as Not Guilty by Reason of Insanity(.2%) or sentenced to prison (24%)
- Recidivism – ~71% recidivate within 3 years post IST discharge.

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Why?: Our Hypothesis

- Individuals with Schizophrenia Spectrum Disorders are drifting into an untreated, unsheltered condition.
- These conditions are leading to increased contact with police and criminal charges.
- This increased contact is leading to a surge in IST referrals to state hospitals.
- Building more state hospital beds will only exacerbate the problem long term.
- IST restoration is not adequate long term treatment plan.
- So, what can we do?

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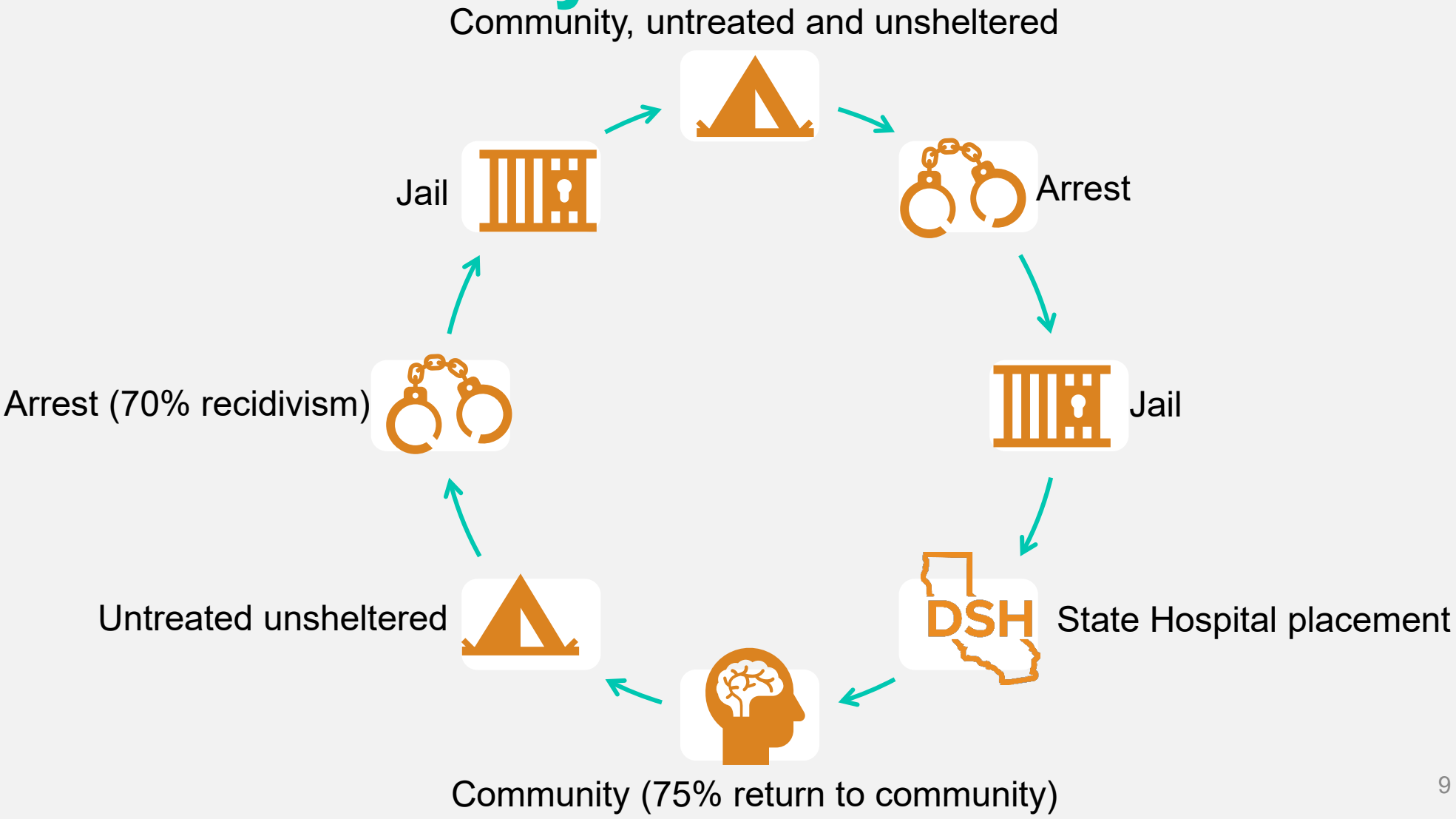
Let’s Break the Cycle



Timeframes for Strategies and Solutions – Bridge to Broader Behavioral Health Initiatives

Short-term (April 1, 2022)

Immediate solutions for 1600+ in jail waiting plus new referrals

Provide access to treatment now – in jail or in community including diversion

Identify those who have already restored

Reduce new IST referrals

Medium-term (Jan 10, 2023)

Continue to provide timely access to treatment

Begin other changes that address broader goals of reducing the number of ISTs,

Increase IST treatment alternatives

Long-term (Jan 10, 2024 or Jan 10, 2025)

Implement longer term solutions that can move the needle toward breaking the cycle of criminalization

Reduce the number of individuals found IST on felony charges while broader behavioral health transformation initiatives are implemented

CalAIM, Behavioral Health Care Continuum, Community Care Expansion

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IST Solutions Workgroup Guiding Principles

- Mental health treatment should be delivered in community-based treatment options to the greatest extent possible.
- While jail is not the appropriate setting for mental health treatment, jails need to be able to provide mental health treatment for individuals who are in jail and require treatment.
- Engagement of individuals with lived-experience and family members in planning and implementing solutions and programs is critical.
- Short-term solutions focus on treating the 1700+ individuals found incompetent to stand trial on felony charges and waiting in jail for access to treatment or diversion programs.
- Medium-term solutions focus on increasing access to community-based treatment and diversion for individuals found incompetent to stand trial on felony charges.
- Long-term solutions aim for system transformation and to reverse the trend of criminalizing mental illness.
- Implementing solutions to achieve the short-, medium- and long-term goals requires collective, multi-sector solutions and collaboration.
- To address the current IST crisis, implementation of short-term strategies that are not in alignment with long-term goals may be needed, but should be time-limited, phased out when medium- and long-term solutions are implemented, and not detract from the focus and implementation of the long-term goals.

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Working Groups

Deliverables: Define actionable recommendation(s), cost/funding required, statutory changes that may be required, metrics to track and data sources

1. Early Access to Treatment and Stabilization for Individuals Found IST on Felony Charges

Goal: Identify short-term solutions to provide early access to treatment and stabilization in jail or via JBCTs in order to maximize re-evaluation, diversion or other community-based treatment opportunities and reduce length of stay.

2. Diversion and Community-Based Restoration for Felony ISTs

Goal: Identify short-term, medium-term and long-term strategies to implement Diversion and Community-Based Restoration programs.

3. Initial County Competency Evaluations

Goal: Reduce the number of individuals found Incompetent to Stand Trial by strengthening the quality of the initial county competency evaluation (aka Alienist Evaluations)

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Group 1 (Early Access) Short-Term Solutions Examples

- Provide technical assistance to Sheriffs' Departments to expand use of IMOs, when appropriate, in jail settings.
- Expand use of technology/telehealth for IMO and/or other medication/treatment determinations.
- Expand the use Long-Acting Injectable medication in Jail Settings.

Group 1 (Early Access) Medium-Term Solutions Examples

[In conjunction with and building on Short-Term Solutions]

- Prioritize community-based restoration and diversion by:
  - Allowing an individual deemed IST with felony charges who is awaiting treatment with DSH to retain their place on the waitlist
  - Improving communication between DSH and local courts so that a person is not removed from diversion prematurely if a bed is available at DSH.
- Establish required timelines for evaluation and report submission to reduce the length of time people wait in jail
- Implement mental health & SUD screening at booking; immediately assess those screened as mentally ill to determine treatment course that can begin in jail, including medications
- Ensure that an experienced District Attorney and Public Defender are present daily to review cases of those screened as mentally ill at booking to eliminate cases that will not be filed (defendant to be released). For defendants in situations where complaint is likely to be filed, review as to conditions for release pre-trial into treatment and services for a recommendation to the Judge at or before arraignment. Attorneys would work with a team from Behavioral Health in formulating recommendations.
- Leverage CalAIM opportunities under Enhanced Care Management and ILOS for jail population
- Provide counties with funding to hire forensic peer specialists to support treatment engagement of county jail inmates
- Establish means for IMO to follow discharge

Group 2 (Diversion and CBR) Short-Term Solutions Examples

- Presumptive Eligibility
  - Assume all individuals currently on waitlist are eligible for the DSH Diversion Program, and specified exemptions would be needed to exclude them from the program. (with SME TA, Forensic Peer Support Specialists, and Probation Partnerships; also considering Psychiatric Advanced Directives and Housing)
  - Require the Court to consider diversion before committing a defendant to the State Hospital.
  - Require that Evaluators, if finding incompetency, include an opinion on whether or not the defendant would be suitable for diversion, and clarify that IMOs may be issued and follow the defendant into community treatment if diversion is granted.
- Enhance Data Sharing & Collaborations
  - Standardize dissemination of waitlists from state to counties
  - DSH partner with County Behavioral Health to jointly triage the existing DSH waitlist (requires additional information)
  - Improve communication solutions between criminal justice partners and county BH agencies
  - Provide TA to counties, including best practice guides in partnership with key stakeholders
- Pursue conservatorship under 1370 for gravely disabled

Group 2 (Diversion and CBR) Medium-Term Solutions Examples

[In conjunction with and building on Short-Term Solutions]

- Leverage CalAIM opportunities from Enhanced Care Management and ILOS
- Add an amendment to 1370 so others (beside the judge) can recommend re-evaluation as PD might find clients with drug induced psychosis have restored competency while in jail and could be removed from IST waitlist
- Reform PC 1001.36 definition of “unreasonable risk to public safety” to “clear and present risk to public safety” and to allow the judge to offer and authorize diversion over the objection of the prosecuting attorney similar to PC 1001.95.
- For defendants held in jail after commitment beyond statutory time require a re-evaluation as to stability and suitability for diversion with a mandated report to the Court.
- Leverage potential opportunity of expanded role of probation in diversion process to focus on rapport building and increasing client engagement in treatment and prescribing
- Provide flexibility and expedited licensing to stand up access to inpatient beds and housing which is critical in LA-ODR model.
- Establish civil commitment for people who need involuntary medication, similar to what Wisconsin uses (Chapter 51) – can be used without removing a person's rights (conservatorship) and can be utilized before the person is ending up in custody.

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Group 3 (Competency Evaluations) Short-Term Solutions Examples

- Provide training for current alienists and future pipeline
  - TA with videos, template reports, checklists, etc. to increase knowledge for existing alienists (DSH website resource page for evaluators, Sheriffs for IMOs)
- Triage waitlist (i.e., CO criteria) – identify needs for acute hospitalization
- Address IMO challenges in reports, including whether there is TA needed to address whether psychologists can make this recommendation rather than only psychiatrists
- Identify potential for and requirements of tele-evaluations (i.e., San Diego)
- Identify field of current evaluators – solicit lists from counties
- Clarify potential for 1370 court competency re-evaluations

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Group 3 (Competency Evaluations) Medium-Term Solutions Examples

[In conjunction with and building on Short-Term Solutions]

- Establish dedicated funding pool with standards and accountability/quality oversight to support increased funding for and quality of reports
  - Identify low-quality evaluators and establish mechanism to exclude
- Provide legislative clarification that psychologists can opine IMOs
- Change statutory language from “may” to “shall” consider and make specific findings as to whether or not the defendant would be appropriate for diversion
- Statute change to require alienist recommendation of probability of restoration – address neuro-cognitive disorders and medical factors)
- Set time frames for appointment, receipt of reports, etc. that are mandatory (absent a showing of good cause) as a Rule of Court (or statute)
- Identify administrator to assemble packet with key legal docs for evaluation
- Identify demographics and cultural and linguistic competence of evaluators. Ensure training of alienists include information on discrepancies and biases in evaluations.
- Treat 1170(h) felonies (so-called “county jail felonies”) like misdemeanors per 1370.01, including diversion to other type of treatment – noted potential for increase due to potential malingering, unintended consequences

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Final Report: Summary

- Short-term solutions
  - Support increased psychiatric care and IMOs in jails through funding, clinical training, and technical assistance (TA)
  - Improve coordination between all stakeholders from arrest/booking through discharge from DSH
  - Increase diversion participation – reassess IST defendants on waitlist; increase TA for counties; prioritize IST defendants for admission over likely to be IST defendants; provide additional funding for housing
  - Provide training about implementing effective treatment engagement strategies to all county stakeholders
  - Training for court-appointed evaluators to improve initial competency reports
  - Include justice-involved individuals with SMI in state-level homelessness, behavioral health, and community care initiatives and; include criminal justice partners in local planning efforts

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Final Report: Summary

- Medium-term solutions
  - Statutorily prioritize community outpatient treatment and Diversion for felony IST defendants
  - Increase funding and opportunities for community treatment models
  - Establish state-wide pool of court-appointed evaluators and improve statutory processes for competence evaluations
  - Improve IMO statutory process
  - Increase funding for Diversion and CBR; increase pathways into Diversion
  - Revise role of CONREP Community Program Director
  - Explore alternatives to jail-based competency treatment
  - Increase access to community inpatient and outpatient beds through funding, expedited licensing processes, landlord incentives
  - Support robust wraparound treatment and stabilization supports in community
  - Expedite assessments and treatment post-booking

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Final Report: Summary

- Long-term solutions
  - Coordinate and work with Homeless Coordinating and Financing Council and Dept. of Healthcare Services to advocate for justice-involved populations access to housing and support Cal-AIM
  - Quality oversight of court-appointed evaluators/reports
  - Increase opportunities for pre-arrest and pre-booking diversion
  - Expand community housing and treatment resources for this population; increased access to permanent supportive housing; funding for all AB 1810 diversion
  - Develop new licensing for enriched intensive community-services; review and implement improvements to MHSA and LPS Act to facilitate access to care
  - Phase out use of jail-based competency treatment programs
  - Develop and support cross-system data sharing initiatives
  - Workforce development
  - Revise IST statutes to require prosecutor to establish competency

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Summary of Feedback Provided re: Final Recommendations

- Feedback was wide-ranging and included:
  - Specific support or opposition statements for certain solutions
  - Suggested revisions or additions to existing solutions
  - Recommended shifting solutions between the short-, medium- and long-term categories
  - Provided additional options or solutions for consideration
  - Requested funding considerations be added for certain solutions
  - Conveyed concerns about existing IST treatment and processes
  - Expressed some concerns about the workgroup process or discussions

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Summary of Feedback Provided re: Final Recommendations

- Overall support for most solutions, particularly those focused on
  - prioritizing and increasing access to diversion,
  - community-based treatment and capacity building,
  - expanding role of peer supports,
  - training and technical assistance
  - enhancing communication between state/local partners
- Opposition feedback primarily focused on:
  - current reliance on jail-based competency treatment programs,
  - solutions involving
    - involuntary medication administration in jails, and
    - expansion of inpatient capacity to treat ISTs,
    - use of risk assessment tools that have potential for racial bias

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2022-23 GOVERNOR'S BUDGET

Prior Year Investments – IST/Capacity Update

- IST Diversion Pilot Expansion
  - 24 existing county programs of which 16 will expand to serve Felony ISTs
  - 6 new county programs – FISTs and likely to be found FIST
- Community Based Restoration Expansion
  - LA County – 300 beds activated in 2021
  - New Counties – early planning stages
- IST IMD/Acute Capacity
  - Planned contract with existing facility/provider for up to 117 beds
  - Additional partnerships underway for new IMD infrastructure
  - Support community IST continuum of services
- IST Re-Evaluation Services
  - Statewide service to re-assess IST defendants on the waitlist
  - 25+ counties and counting
- 180-Bed CONREP Forensic Assertive Community Treatment
  - 3 locations x 60 beds each: Sacramento, San Diego, Bay Area
  - Serves clients statewide
  - First beds activated in February 2022
- CONREP Continuum of Care
  - 30-bed Statewide Transitional Residential Program (STRP) in Northern CA – Spring 2022
  - 78-bed step down program – Summer 2022

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IST Solutions Proposal

Governor's Budget - $571 million

- Early Access to Treatment and Care Coordination
- Diversion and CBR Expansion

Link to funding proposal:

https://www.dsh.ca.gov/About_Us/docs/2022-23_IST_Solutions_Proposal.pdf

Early Access to Treatment and Care Coordination

To provide immediate solutions to support access to treatment for individuals currently found IST on felony charges and waiting in jail

- Early access to medication stabilization teams and increased clinical engagement
- Statewide funding for psychiatric medication support including long-acting injectable
- DSH case management teams to coordinate IST care with counties and other community providers
- $24.9M in FY 2021-22, $66.8M in FY 2022-23 and ongoing

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Expanding Diversion and CBR

Increase IST treatment alternatives by investing in the community infrastructure required to support the felony IST population

- Infrastructure to increase the number of community residential beds dedicated to DSH Diversion and Community-Based Restoration programs
  - One Time $241M – residential infrastructure investment
  - Estimated 5,000 Beds over 3 years
  - Serve 3,000 new individuals annually with 18-20 mos LOS
  - Additional one-time $60M – increase housing for current diversion opportunities

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Expanding Diversion and CBR

$266.5M Increase IST treatment alternatives by investing in the community infrastructure required to support the felony IST population

- Augmented funding for counties to expand DSH Diversion and Community-Based Restoration
  - $125,000 per patient for wrap-around treatment services
- Supporting county partnerships for entities impacted by felony IST community placements
  - $60.0 million annually statewide for non-treatment costs
    - $100,000 ongoing to support county stakeholder workgroups
- Workforce development support for counties and community providers.
  - $6.0 million for ongoing technical assistance, program evaluation, and DSH operations

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Questions?

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State Hospitals