

MOTION BY SUPERVISOR HOLLY J. MITCHELL

September 27, 2022

Swiftly Creating More Beds for Persons Mentally Incompetent to Stand Trial with Newly Available State Funding

Under State and Federal law, all individuals who face criminal charges must be mentally competent to help in their defense. An individual who is incompetent to stand trial is defined as someone who, as a result of a mental health disorder or developmental disability, lacks the mental competency required to participate in legal proceedings, California Penal Code Section 1367(a).

In 2015, the Los Angeles County (County) Department of Health Services' (DHS) Office of Diversion and Reentry (ODR) began leading the County's Misdemeanor Incompetent to Stand Trial (MIST) Community Based Restoration Program whereby persons declared MIST could be released, housed, and cared for in the community.

On January 1, 2022, MIST was profoundly changed by Senate Bill (SB) 317. Now, when persons are found incompetent on a misdemeanor, the court may grant them mental health diversion, refer them for assisted outpatient treatment or conservatorship, or dismiss their charges. In the County, most persons found MIST are promptly granted diversion, creating the need to rapidly house and care for them.

DHS' ODR program has demonstrated an ability to effectively spend available funds to quickly create new MIST beds. For example, after SB 317 took effect on January 1, 2022, ODR used \$2,369,760 in one-time funding to create 90 new MIST beds over a two-to-three-week period. These 90 new MIST beds, coupled with the pre-existing 156

- MORE -

MOTION

SOLIS _____

KUEHL _____

HAHN _____

BARGER _____

MITCHELL _____

MOTION BY SUPERVISOR HOLLY J. MITCHELL

September 27, 2022

Page 2

MIST beds that ODR had previously created, brought the total ODR-operated MIST beds to 246.

All 246 of ODR's MIST beds, however, are currently saturated. Other potential placement destinations for MIST persons, include the Department of Mental Health's (DMH) Enriched Residential Services (ERS) and DMH's Crisis Residential Treatment Program. However, those beds may be less available and sometimes are available for shorter periods of time. DMH is currently working on a contract that would add 12 more ERS beds that could be used for persons who are MIST.

The situation has reached a crisis point. As reported in national media, mentally ill persons are languishing in the County's jail in overcrowded conditions without any treatment. On September 8, 2022, a class of incarcerated plaintiffs filed a temporary restraining order application in Federal court to limit how long the County can leave mentally ill and other incarcerated persons in the currently overcrowded jail conditions. (Rutherford vs. Los Angeles County, Case No. CV 75-04111 DDP). The County filed a response to this application that acknowledges that there has been a precipitous rise in the number of individuals in the County jail system who have been diagnosed with a mental illness. "Since 2012, the percentage of such [mentally ill] inmates has increased from 17% of the overall inmate population to approximately 48% of the overall inmate population...and the inmates with the most severe mental health profile...has risen from 460 to approximately 1,577 such inmates." (See Defendants' Response to Plaintiffs' Ex Parte Application for Temporary Restraining Order, p. 6.) The County's response also acknowledges that the lack of available community mental health beds prevents mentally ill persons from being transferred out of the jails.

The County is exploring holistic approaches to increase the number of beds for acutely mentally ill persons who committed felonies and are currently in jail. A new source of funds is now available to help the County immediately address its urgent need for mental health beds for MIST persons.

On June 30, 2022, Governor Gavin Newsom signed the Budget Act of 2022, Assembly Bill 178 (Chapter 45, Statutes of 2022). The Budget Act made \$100M available for the County to support and expand access to treatment for individuals with behavioral

MOTION BY SUPERVISOR HOLLY J. MITCHELL

September 27, 2022

Page 3

health disorders who are involved in the justice system. Per the Budget Act, \$50M of this \$100M must be used to support MIST individuals. On September 6, 2022, the County's Chief Executive Officer sent a letter to the State that allows the County to receive these funds.

It is time for the County to leverage its tremendous clinical subject-matter expertise to swiftly create more MIST-level beds.

I THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Directors of the Department of Health Services (DHS) and the Department of Mental Health (DMH), in coordination with the Chief Executive Officer and County Counsel as appropriate, to develop the written proposed plan on how the County should spend the newly available \$50M of State funds to immediately expand the number of MIST-level beds. The plan shall be both compliant with the Budget Act of 2022, Assembly Bill 178, and effectively leverage existing expertise and resources to quickly yield the most quality beds with the available funding. The Directors of DHS and DMH shall report back in writing in no more than 30 days.

#

(YV/JM)