

**REVISED SUBSTITUTE MOTION BY
SUPERVISORS HOLLY J. MITCHELL AND LINDSEY HORVATH**

February 7, 2023

Acting to Expand Services for the Misdemeanor Incompetent to Stand Trial Population

Chapter 559, Statutes of 2021, Senate Bill (SB) 317, Competence to Stand Trial, took effect on January 1, 2022, and reformed the Misdemeanor Incompetent to Stand Trial (MIST) program. Under SB 317, the Superior Court (Court) may grant declared MIST individuals mental health diversion services and refer them to the following: conservatorship, Assisted Outpatient Treatment (AOT), or community-based treatment. Alternatively, the Court may dismiss their charges. When an individual who is deemed MIST is diverted by the Court under California Penal Code 1001.36, California’s mental health diversion law, they receive treatment, in lieu of prosecution and jail.

SB 317 created a significant increase in the demand for mental health diversion services, housing, and community services in the County of Los Angeles (County). Chapter 45, Statutes of 2022, Assembly Bill (AB) 178, the Budget Act of 2022 (Budget Act), made \$100,000,000 in one-time funding available for the County to support and expand access to treatment for individuals with behavioral health disorders who are involved in the justice system. Per the Budget Act, \$50,000,000 of this \$100,000,000 must be used to support MIST individuals (MIST Funding).

On September 27, 2022, the Board of Supervisors (Board) unanimously, in a

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MOTION

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motion entitled, [“Acting to Expand Services for the Misdemeanor Incompetent to Stand Trial Population,”](#) directed the Department of Health Services (DHS) and Department of Mental Health (DMH) to create a plan to immediately expend the \$50,000,000 MIST Funding in a manner that maximizes opportunities to safely house, treat and serve MIST individuals. On the same day, the Board also approved a motion, entitled [“Addressing the Mental Health Crisis in Los Angeles County: Developing Mental Health Care Facilities to Help Depopulate the Jail.”](#) Among other things, that motion directed numerous departments to look at various federal and state funding streams, including AB 178 funds, to create alternative safe, non-correctional mental health facilities to serve seriously mentally ill incarcerated persons, designated at “P3” and “P4” levels in LA County jails.

On November 18, 2022, in response to the MIST motion, DHS and DMH released their jointly developed report and plan entitled, [“Swiftly Creating More Beds for Persons Mentally Incompetent to Stand Trial with Newly Available State Funding”](#) to both expand the number of beds for persons who are deemed MIST and to supplement existing treatment and housing services.

Subsequently, questions have arisen on whether the November 18, 2022, proposed MIST Plan fully meets the technical requirements of AB 178 and how it impacts, if at all, the remaining \$50,000,00 non-MIST portion of the funds (Non-MIST Funding). As the County awaits State clarification, it is important to be ready to implement relief for the MIST population to protect the life, health, and safety of all vulnerable persons at risk of experiencing homelessness in the County.

I WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct and authorize the Interim Director of the Department of Mental Health (DMH) or the Director of the Department of Health Services (DHS), or their designees, to be determined upon further discussion with the State Department of Health Care Services (DHCS), to accept \$100,000,000 in Assembly Bill (AB) 178 funds and delegate authority to the Interim Director of DMH to enter into and/or amend any contracts, as necessary, to accept the funds. County departments are not authorized to expend AB 178 funds unless they meet the

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- requirements, as outlined by directives 2 and 3 below, or as stipulated in any agreement by the State of California.
2. Direct County Counsel, in coordination with the CEO, the Director of DHS, the Interim Director of DMH, the Executive Director of Justice, Care and Opportunities Department (JCOD), the Director of DHCS, and/or other relevant parties, to review the Budget Act, AB 178, seek State guidance, and ensure any plans developed by the assigned departments in response to the September 27, 2022 motions entitled “Swiftly Creating More Beds for Persons Mentally Incompetent to Stand Trial (MIST) with Newly Available State Funding” and “Addressing the Mental Health Crisis in Los Angeles County: Developing Mental Health Care Facilities to Help Depopulate the Jail,” comply with the Budget Act’s provisions.
 - A. Those written plans shall be shared with the Board of Supervisors (Board) before implementation.
 - B. The Director of DHS and the Interim Director of DMH, in coordination with the CEO, County Counsel and JCOD, shall report back to the Board within 30 days with a revised written plan to implement the plans related to the MIST Funding, that among other things, addresses how the MIST Funding and Non-MIST Funding programming plans relate.
 - C. County Counsel shall confirm in writing that proposed AB 178 plans comply with the Budget Act.
 3. Direct the Director of DHS and the Interim Director of DMH to implement the revised written plan for MIST Funding upon confirmation by County Counsel that it complies with AB 178, and take the following actions:
 - A. Direct the CEO or her designee to approve authority for the Director of DHS and the Interim Director of DMH to hire, consistent with the revised written compliant MIST plan, via the Ordinance Position Authority and authorize the Director of DHS and the Interim Director of DMH to immediately recruit positions utilizing ordinance only positions.

- B. Delegate authority to the Director of DHS and the Interim Director of DMH, or their designees, to negotiate and execute Budget Act-compliant agreements, consistent with the revised compliant written MIST plan, with qualified Mental Health providers to provide acute hospital transitional beds to carry out the intent of the Board in adopting the plan, subject to review and approval as to form by County Counsel, with notification to the Board and the CEO. The foregoing delegated authority includes authority to negotiate, on a case-by-case basis, appropriate changes to the standard County insurance and indemnification provisions, and other standard County contract terms, subject to written notice to the Board following approval by CEO Risk Management and approval as to form by County Counsel.
4. Direct the Director of DHS and the Interim Director of DMH, and other relevant departments, to report back in writing in six months after implementation of any AB 178 plan and quarterly thereafter on key metrics such as:
 - A. The number of MIST or non-MIST beds created;
 - B. The contracted agencies providing services;
 - C. The demographics of persons being served;
 - D. The amount, average length of stay, and types of services (e.g. enhanced clinical care, inpatient care, mental health stabilization housing and supportive interim housing) provided;
 - E. The number of clients referred to DMH Intensive Care Division, Lanterman-Petris-Short conservatorship, AOT Assisted Outpatient Treatment, and community-based treatment; and
 - F. Funding balance.
5. Direct the Director of DHS and the Interim Director of DMH, or their designees, to report back in writing in six months and quarterly thereafter, if needed, on sustainable funding sources to support this program when the one-time funding is expected to be fully exhausted (i.e., Fiscal Year 2025-26 under the current plan). This report must include strategies to explore all available potential state

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and federal funding sources, including ongoing Medi-Cal funding, that will ensure the County has ongoing funds to carry on at least the same level of services for the program when the current one-time State funding is depleted.

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(YV/KK/JM)

**Acting to Expand Services for the Misdemeanor Incompetent to Stand Trial
Population**

VOTES REQUIRED:

3-VOTES 4-VOTES 5-VOTES

CATEGORIES: (Please check those that apply)

- 1. Child Welfare
- 2. Community and Youth Empowerment
- 3. County and Municipal Services
- 4. Economic Justice
- 5. Economic and Workforce Development
- 6. Education
- 7. Environment and Environmental Justice
- 8. Fiscal
- 9. Governance
- 10. Health
- 11. Homelessness and Housing
- 12. Immigration
- 13. Public Safety and Diversion
- 14. Social Justice and Human Rights
- 15. Technology and Data
- 16. Arts, Culture, and the Creative Economy
- 17. Legislation
- 18. Parks and Open Space
- 19. Planning/Land Use
- 20. Transportation
- 21. Veterans
- 22. Delegated Authority