

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**LEG13-06**

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Title	Action Requested
Proposed Legislation: Outpatient Status for Mentally Disordered and Developmentally Disabled Offenders	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code §§ 1601, 1602, and 1603	January 1, 2015
Proposed by	Contact
Mental Health Issues Implementation Task Force	Carrie Zoller, 415-865-8829 carrie.zoller@jud.ca.gov
Hon. Richard J. Loftus, Jr., Chair	

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### Executive Summary and Origin

The Mental Health Issues Implementation Task Force proposes that the Judicial Council sponsor legislation to amend Penal Code<sup>1</sup> sections 1601(a), 1602(a) and 1603(a) pertaining to outpatient status for mentally disordered and developmentally disabled offenders. The amendment to section 1601(a) would allow the court to conditionally release a defendant found incompetent to stand trial to the community, where appropriate, to receive mental health treatment with supervision, rather than in a custodial or hospital setting, until competency is restored, if the court finds an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others. The amendments to sections 1602(a) and 1603(a) would require the court to consider all of the listed criteria before placing an offender who is subject to section 1601(a) or (b) on outpatient status, rather than require the court to ensure that all of the conditions have been met.

### Background

California's criminal courts serve a disproportionate number of mentally ill offenders. People with mental illness are more likely to be arrested than those in the general population for similar offenses and many enter the criminal justice system as a direct result of their unmanaged illness. As the jurisdiction of local courts expands under criminal justice realignment, it is anticipated that the mentally ill offender population will have an even greater impact on court calendars.

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<sup>1</sup> All Statutory references are to the Penal Code.

As part of a national project designed to assist state judicial leaders in their efforts to improve responses to people with mental illnesses in the criminal justice system, in 2008 then-Chief Justice Ronald M. George established the Task Force for Criminal Justice Collaboration on Mental Health Issues (task force). The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve systemwide responses to offenders with mental illness. The task force issued its final report in April, 2011. In January 2012, Chief Justice Tani G. Cantil-Sakauye appointed the Mental Health Issues Implementation Task Force (MHIITF) to develop a plan to implement the recommendations in the report.

The task force recognized that, “[p]eople with mental illness who have become involved in the criminal justice system are often clients of other public systems, making collaboration between the courts and community partners essential. . . Courts, in collaboration with state hospitals and local mental health treatment facilities, should create and employ methods that prevent prolonged delays in case processing and ensure timely access to restoration programs for defendants found incompetent to stand trial.”<sup>2</sup> In line with this overarching principle, the task force included Recommendation 36, which suggests modifying existing statutes to give judicial officers hearing competency matters access to a variety of alternative procedural and dispositional tools. The recommended tools include jurisdiction to conditionally release a defendant found incompetent to stand trial to the community, where appropriate, rather than in a custodial or hospital setting<sup>3</sup>, to receive mental health treatment with supervision until competency is restored. The MHIITF has developed a proposal that will assist courts in ensuring defendants found incompetent to stand trial have timely access to restoration programs by providing courts with authority to release defendants into appropriate community settings to receive mental health treatment so long as public safety is not compromised.

The MHIITF is recommending Judicial Council sponsorship of the proposed legislation to address these issues. This MHIITF legislative proposal would amend section 1601(a) which concerns offenders who are charged with and found incompetent on a charge of, convicted, or found not guilty by reason of insanity of certain specified serious felony charges. Section 1601(a) currently prohibits an offender found incompetent or found not guilty by reason of insanity, from being placed on outpatient status until that person has first been confined in a state hospital or other facility for 180 days or more after having been committed. If passed, the proposed legislation will amend section 1601(a) to allow such an offender to be placed on outpatient status “if the court finds an alternative placement that would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.” The proposed legislation would also amend sections 1602(a) and 1603(a) to require the court to *consider* all of the listed criteria before placing an offender who is subject to the provisions of

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<sup>2</sup> Administrative Office of the Courts; Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report; April 2011; p.22, 27; [http://courts.ca.gov/documents/Mental\\_Health\\_Task\\_Force\\_Report\\_042011.pdf](http://courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf).

<sup>3</sup> Administrative Office of the Courts; Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report; April 2011; p.29; [http://courts.ca.gov/documents/Mental\\_Health\\_Task\\_Force\\_Report\\_042011.pdf](http://courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf).

1601(a) or (b) on outpatient's status, rather than requiring the court to ensure that all of the conditions have been satisfied prior to placement.

This legislation would assist courts in ensuring defendants found incompetent to stand trial have timely access to restoration programs, by providing courts with authority to release defendants into appropriate community settings to receive mental health treatment, so long as public safety is not compromised. The proposed legislation would provide for improved case handling for defendants with mental illness without placing additional burdens on the courts, encourage greater collaboration with justice system partners, and potentially result in better outcomes for mentally ill offenders.

## **The Proposal**

The proposed legislation would:

- Allow a court to place on outpatient status a person who was charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of certain specified serious felony charges if the court finds an alternative placement that would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.
- Require a court to consider all of the listed criteria before placing an offender who is subject to sections 1601(a) and (b) on outpatient status, rather than allowing placement on outpatient status only if the Court finds that all of the conditions have been satisfied.

## **Alternatives Considered**

The MHIITF considered postponing or declining to propose any legislative change in light of the significant adjustments the criminal courts are undergoing related to public safety realignment. The MHIITF determined that the cautious approach of the proposed legislation will assist courts in ensuring defendants found incompetent to stand trial or not guilty by reason of insanity have timely access to restoration programs by providing courts with authority to release defendants into appropriate, supervised community settings to receive mental health treatment so long as public safety is not compromised. The proposed legislation also encourages greater collaboration with justice system partners, and provides for improved case handling for defendants with mental illness without placing additional burdens on the courts.

## **Implementation Requirements, Costs, and Operational Impacts**

The sponsoring Judicial Council task force is proposing this legislation because it has concluded that its adoption would not increase costs incurred by courts and by justice system partners while improving case handling and, potentially, outcomes for defendants. This would be accomplished by providing courts hearing cases involving mentally ill offenders with authority to place defendants with mental illness into appropriate, supervised community settings to receive mental health treatment so long as public safety is not compromised.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

### Attachments and Links

1. The text of the proposed legislation is attached at page 5.

Section 1601, section 1602 and section 1602 and section 1603 of the Penal Code would be amended, effective January 1, 2015, to read as follows:

Sec. 1. Section 1601 of the Penal Code is amended to read as follows:

(a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600, or the court finds an alternative placement, including an outpatient placement, that would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(b) \*\*\*

Sec. 2. Section 1602 of the Penal Code is amended to read as follows:

(a) Before ~~A~~ any person subject to the provisions of subdivision (b) of Section 1601 may be placed on outpatient status, ~~if all of the following conditions are satisfied:~~ the court shall consider the following criteria:

(1) In the case of a person who is an inpatient, the director of the state hospital or other treatment facility to which the person has been committed advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, and will benefit from such outpatient status.

(2) In all cases, the community program director or a designee advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, will benefit from such status, and identifies an appropriate program of supervision and treatment.

(3) After actual notice to the prosecutor and defense counsel, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status.

(b)-(c) \*\*\*

Sec. 3. Section 1603 of the Penal Code is amended to read as follows:

(a) Before ~~A~~ any person subject to subdivision (a) of Section 1601 may be placed on outpatient status ~~if all of the following conditions are satisfied:~~ the court shall consider the following criteria:

(1) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court and the prosecutor that the defendant would no longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) The community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(3) The prosecutor shall provide notice of the hearing date and pending release to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed with the court, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(b)-(c) \*\*\*