

June 15, 2021

VIA ELECTRONIC MAIL ONLY

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Sacramento County Board of Supervisors
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RE: Opposition to Renewal of Sacramento County's Jail-Based Competency Treatment Unit

Dear Sacramento County Board of Supervisors:

We write regarding the Sacramento Sheriff's request to renew the contract for the 44-bed Jail-Based Competency Treatment Unit ("JBCT") located in the Sacramento County Jails, which the Sacramento County Board of Supervisors ("Board") will discuss at its meeting today, June 15, 2021. We urge the Board to reject the Sheriff's proposal and to instead devote those resources to community-based treatment, which is a more-efficient and more-effective use of these funds.

1. The Mass Incarceration of People with Serious Mental Illness in Sacramento County

As the Board is no doubt aware, the Sacramento County Jails have become a *de facto* mental health treatment facility, with nearly a third of the approximately 3,000 people incarcerated in the jails on psychiatric medications at any one time.¹ The treatment of people with mental illness in the Sacramento Sheriff's facilities is abysmal, as people with serious mental illness are locked in solitary confinement units at alarming rates² and

¹ As of December 31, 2020, 933 of the 3,255 people incarcerated in the Sacramento Jails were on psychiatric medications. See Board of State and Community Corrections Data, available at https://www.bscc.ca.gov/m_dataresearch/.

² See Jason Pohl & Michael Finch II, "No sunlight. No human contact. Why Sacramento still uses extreme isolation in jail," *Sacramento Bee* (March 31, 2021), available at <https://www.sacbee.com/news/investigations/article250167075.html>.

commit suicide in high numbers.³ These conditions have not improved despite an active federal consent decree and multiple monitors who have urged the Sacramento Sheriff to improve conditions in the facilities.⁴

While the mass incarceration of people with serious mental illness is a statewide problem, Sacramento County does worse than most counties in keeping people with serious mental illness out of the criminal legal system. As a May 2017 Stanford Three Strikes Project report highlighted, 40% of people committed to California state prisons from Sacramento County require mental health treatment – higher than all but two of the fifteen largest counties in California.⁵

2. Sacramento’s Jail-Based Competency Treatment Unit Is Part of the Problem, Not the Solution

To cover up these failures, the Sacramento Sheriff utilizes a JBCT, which houses incarcerated people with serious mental illness who have decompensated to the extent that they have been declared incompetent to stand trial in their criminal cases. Initially authorized in 2015, with 16 beds, this JBCT has nearly tripled in five years to 44 beds.⁶ This JBCT does nothing to address the warehousing of people with serious mental illness in Sacramento Jails; after all, once people have been re-evaluated and found competent, they only return to their original Jail unit to be prosecuted.

³ During the last ten-year period of available data (2010-2019), there were at least ten suicides in the Sacramento Jails. See California Department of Justice, “Deaths in Custody” Report, available at <https://openjustice.doj.ca.gov/data>.

⁴ See, e.g., First Report of Compliance in Mental Health Services Based on Consent Decree, Dr. Mary Perrien, Doc. No. 136-2 in *Mays v. County of Sacramento* (Jan. 20, 2021), at 39-40 (finding that, despite court requirements barring people with mental illness from solitary units, 58% of people in solitary confinement units were on the mental health caseload), available at https://www.disabilityrightsca.org/system/files/file-attachments/%5B136-2%5D_Exhibit_B_-_First_Report_of_Compliance_in_Mental_Health_Services_Based_on_Consent_Decree_%28Perrien%29%2C_2021-01-20.pdf; First Monitoring Report on Restrictive Housing, Discipline, and Classification Practices in the Sacramento County Jails, Margot Mendelson *et al.*, Doc. No. 140-1 in *Mays v. County of Sacramento* (February 25, 2021), at 22, available at <https://www.documentcloud.org/documents/20521724-sacramento-restrictive-housing-report-february-2021>.

⁵ See Michael Romano, “The Prevalence And Severity Of Mental Illness Among California Prisoners On The Rise,” *Stanford Three Strikes Project* (May 2017), at 5, available at <https://www-cdn.law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf>.

⁶ The Board of Supervisors authorized the first JBCT for 16 beds at Rio Cosumnes Correctional Center in 2015 and increased the program to 32 beds in 2016. Sacramento Board of Supervisors Resolution Nos. 2015-0456 (June 9, 2015), 2016-0095 – 2016-0098 (Feb. 23, 2016).

Moreover, JBCTs are often in austere, solitary-like environments⁷ and cost far more than community-based care.⁸ JBCTs seeks to respond to the lack of available treatment beds in state hospitals, but they do not provide the care and treatment needed for people who have severe mental illness—many of whom should not be in custody in the first place. Yet, despite the short-sightedness of this option, the Sacramento Sheriff is asking to renew his contract with the California Department of State Hospitals (“DSH”) in order to keep the County’s JBCT running.

3. Recommended Approaches to Decarcerating People with Serious Mental Illness in Sacramento County: Mental Health Diversion & Community Care

Rather than renew the Sacramento Sheriff’s JBCT contract, the Board should end the contract and use these resources to improve and expand mental-health diversion and community-based care. These resources are available and effective, but the County has not taken advantage of them.

In 2018, California passed a mental-health-diversion law⁹ to help people with serious mental illness get diverted from the criminal justice system to needed treatment. Despite the passage of this law nearly three years ago, Sacramento County’s felony diversion program only began diverting incarcerated people on March 8, 2021 and *only aims to divert 32 people over the next three years*.¹⁰ This is fewer than the number of JBCT beds at any one time.

The program’s limited scope is directly related to its lack of funding¹¹, as it only has enough beds to treat fifty people at once, or approximately 5% of the Jails’ mental health population at any one time. Yet DSH has affirmed, and multiple studies have found, that at least 50% of incarcerated people with mental illness are divertible.¹² The

⁷ See, e.g., Alexandra Douglas, “Caging the Incompetent: Why Jail-Based Competency Restoration Programs Violate the Americans with Disabilities Act under *Olmstead v. LC.*,” *Georgetown Journal of Legal Ethics*, 32 (2019), 525– 575.

⁸ For instance, one study found that states spend nearly \$400 per day per patient by using outpatient programs over inpatient JBCT-like units. See W. Neil Gowensmith, *et al.*, “Lookin’ for Beds in All the Wrong Places: Outpatient Competency Restoration as a Promising Approach to Modern Challenges,” *Psychology, Public Policy, and Law* (June 6, 2016), at 9, available at <http://dx.doi.org/10.1037/law0000088>.

⁹ See AB 1810 (2018) at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1810.

¹⁰ See DSH 2021-22 May Revision Proposals and Estimates Report (“DSH May Revise”), at 229, available at https://dsh.ca.gov/About_Us/docs/2021-22_May_Revision_Estimate.pdf.

¹¹ *Id* (showing that Sacramento’s three-year diversion program has \$4.4 million in funding from the State but only aims to divert 32 people).

¹² *Id* at 234 (“As of March 2020, DSH found that little more than half of IST cases on the waitlist reviewed may be eligible for diversion based on the diagnosis and/or the condition of

Board should redirect its JBCT funding towards its nascent diversion program, which is in dire need of an expansion. Because community-based treatment is less expensive than JBCT, doing so will allow the County to treat more IST defendants with the same level of funding, which will both improve treatment and reduce treatment delays.

The Board should also take advantage of DSH’s 2021-22 Budget and create a community-based restoration program. Currently, only Los Angeles County has a community-based restoration program, which treats people found incompetent to stand trial in the community and then connects them to needed resources upon the conclusion of their criminal cases.¹³ That program has been very successful—quickly transitioning people from jails to community treatment and with impressive results. Now the State is proposing to expand community-based restoration programs to additional counties, offering millions in State funding to create 252 community-based treatment beds over the next three financial years.¹⁴ The Board should use this funding to create a community-based restoration program in lieu of a JBCT, thus ending the needless cycle of incarceration for people with serious mental illness.

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homelessness in relation to the charged offense. These individuals are not likely to pose a safety risk to the community with appropriate medication and treatment and are not charged with one of the exclusionary crimes listed in Penal Code (PC) 1001.36.”). *See, e.g.*, Stephanie Brooks Holliday *et al.*, “Estimating the Size of the Los Angeles County Jail Mental Health Population Appropriate for Release into Community Services,” RAND Corporation (Jan. 7, 2020), *available at* https://www.rand.org/pubs/research_reports/RR4328.html.

¹³ DSH May Revise at 248 (“In the LA County model, ISTs who successfully complete treatment in CBR and have their criminal proceedings resolved are eligible for continued community placement through the permanent supportive housing program. This model of care bridges a significant gap often experienced by individuals, especially those with mental health conditions, re-entering the community after incarceration. The model of care also offers both hope for the individuals and a decreased likelihood of recidivism.”).

¹⁴ *Id* at 250.

4. Conclusion

In April 2021, the Board showed that it could take the necessary bold steps to address the mass incarceration of people with serious mental illness in Sacramento County, voting down the Sheriff's proposal to create a new mental health annex in the Sacramento Jails.¹⁵ The Board should now take the additional step of ending its reliance on jail-based treatment by voting down the Sheriff's proposal and instead focusing the County's resources on community-based treatment options. We urge the Board to work with DSH to grow its diversion program and create a community-based restoration program in lieu of the jail-based "treatment" that is currently being provided to incarcerated people in Sacramento.



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¹⁵ See Pohl & Finch, *supra* note 2.