



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Executive Office
Department No.: 012
For Agenda Of: September 10, 2024
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors

FROM: Department Director(s) Contact Info: Mona Miyasato, County Executive Officer, 568-3400
Tanja Heitman, Assistant County Executive Officer, 568-3400

DocuSigned by:
M. Miyasato
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SUBJECT: FY 22-23 Department of State Hospital Felony Incompetent to Stand Trial Penalty Payment

County Counsel Concurrence

As to form: N/A

Other Concurrence: Risk Management

As to form: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Approve Budget Revision Request (BJE No. 0010101) to establish appropriations of \$414,000 in General County Programs General Fund for Services & Supplies funded by release of Committed AB 199 fund balance (\$414,000). (4/5 vote required); and
- b) Determine that the above action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), finding that the activities are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activities in questions may have a significant effect on the environment, the activities are not subject to CEQA.

Summary Text: Summary Senate Bill 184 (2022) implements a cap on the number of individuals committed as Incompetent to Stand Trial (IST) on felony charges and imposes a penalty on counties if it is exceeded. Our County exceeded the cap for fiscal year 2022-23 and has been assessed a penalty of

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\$414,000 due to the Department of State Hospitals. This penalty, however, will come back to the County of Santa Barbara (County) to be used for certain expenditures to reduce the felony IST population. This purpose of this report is to provide awareness of the penalty, which is significantly less than originally projected two years ago, and appropriate the required funds. In FY 2022-23, the felony IST population was 130 individuals. Today, it is 103 individuals per year.

Background: Felony incompetent to stand trial individuals are those with serious mental illnesses who are accused of felony crimes, but due to their mental illness are 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 the Department of State Hospitals (DSH) for treatment. Based on DSH data, the majority are experiencing homelessness at the time of their arrest and often have not accessed any Medi-Cal specialty mental health treatment services in the six months prior to their arrest. These individuals are often cycling in and out of the criminal justice system; in California, nearly half of the individuals at DSH had 15 or more prior arrests. IST commitments in California have increased year over year with currently over 709 individuals on a state-wide waitlist. The increase in referrals to DSH continue to outpace all capacity growth and systems improvement.

In December 2022, the DSH released Departmental Letter (DL) 22-003 to inform counties of statutory requirements included in Senate Bill 184 (Chapter 47, Statutes of 2022) that established a growth cap for all counties for individuals committed as Incompetent to Stand Trial (IST) on felony charges pursuant to Section 1370 of the Penal Code. The DL outlined the methodology for the IST determination counts and the rate that would be applied for potential penalty payments and the FY 2021-22 baseline felony IST determination counts for each county were provided at that time.

During FY 2022-23, DSH provided unreconciled data for each county's IST determination counts for the first two quarters of the fiscal year. Following the release of this information, DSH received multiple inquiries regarding the methodology applied for IST determination counts and requests to support a dispute process. In response to these inquiries, DSH worked with statewide county representatives to establish primary components of the growth cap program including the 1) the methodology utilized for IST determination counts applied to the 2021-22 baseline year and subsequent fiscal years, 2) the penalty rate a county would be potentially charged for the number of IST determinations that exceed the baseline; and 3) implementation of a dispute process for IST determination counts reported by DSH to each county. In January 2024, DSH released the updated guidance which makes specific the IST growth cap and penalty payment process and timelines (Attachment C).

Staff previously reported the initial penalty was estimated as \$6.4 million. DSH and counties engaged in negotiations which resulted in DSH changing the calculation formula that were favorable to our county. On June 21, 2024, DSH issued an invoice of \$414,000 (Attachment B) to the County for FY 2022-23 IST Growth Cap fees. Santa Barbara County had 130 IST during FY 2022-23, of which 92 IST were included in penalty. The FY 2021-22 baseline was 80 IST for the year and the County is fiscally responsible for the 12 IST over the baseline. The amount is \$414,000 utilizing the payment methodology of \$69,000 per IST and discounts for the County's participation in DSH programs (Diversion, Jail Based Competency and Treatment, Early Access and Stabilization Services).

Payments are due 90 days after the date that the invoice was received in accordance with (Welfare and Institutions Code 4336 (3)(D)). The estimated due date for payment is September 19, 2024.

After payment is received by DSH and following County submission of a local expenditure plan, DSH will return the funds back to the County. The local expenditure plan is required to be on file with DSH detailing the projected use of the Growth Cap returned funds. In March 2024, DSH provided Expenditure Plan Guidance (Attachment D) which details the plan requirements, timelines, reporting obligations, and a proposed template. Additionally, the County will be responsible to report on utilization of the funds in accordance with the local expenditure plan.

County justice and health and human services partners formed a Felony IST Collaborative Workgroup in 2023 and are utilizing a five-year DSH grant for this group to meet regularly and work toward local solutions. It is anticipated that the local FY 22-23 expenditure plan will involve enhancing one of the County’s pilot initiatives or sustaining an existing program since the resources are not anticipated be able to support a new ongoing program. Eligible uses include activities for pre-booking, post-booking before an IST commitment, and re-entry services.

This Board item requests approval of Budget Revision Request number 0010101 (Attachment A) to establish appropriations to issue the FY 2022-23 penalty payment to DSH. Staff will submit the FY 2022-23 local expenditure plan to DSH in Fall of 2024 and return to the Board with a Budget Revision for the funds to be returned to the County and utilized on activities within the approved plan. This penalty cap process will occur every fiscal year and DSH anticipates issuing the FY 2023-24 penalty in Spring 2025.

Fiscal Impacts:

Budgeted: No. Budget Revision Request (BJE No. 0010101) is attached to establish budget.

Fiscal Analysis:

Funding Sources	Current FY Cost:	Annualized On-going Cost:	Total One-Time Project Cost
General Fund	\$ 414,000.00		\$ 414,000.00
State			
Federal			
Fees			
Other:			
Total	\$ 414,000.00	\$ -	\$ 414,000.00

The penalty payment to DSH is being funded by the General County Programs General Fund AB 199 criminal fees backfill fund balance. AB199 funds are provided by the State as ongoing revenue backfill to replace the loss of collection fees reduced or eliminated by legislation. They are available for justice related expenditures, and it is anticipated these funds will be used for the ongoing DSH penalty payment.

Per the IST Growth Cap Program, 100% of the penalty payment will be returned by DSH to fund costs associated with an expenditure plan that will be developed to meet the goal of reducing felony IST determinations in the future. Staff will return to the Board with the budget revision for the returned funds and associated activities.

Additionally, DSH is in process of tabulating the FY 2023-24 IST totals by County. It is anticipated that the reconciliation of data for billing will occur in Fall 2024 and invoicing in Spring 2025. Based on the

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unreconciled DSH information, the County had 103 IST during FY 2023-24, of which 92 IST were included in estimated penalty. The 21-22 baseline is 80 for the year. The penalty IST owed for would be for the 12 based on a tiered calculation. The estimate FY 2023-24 is \$414,018 based on DSH payment methodology.

Special Instructions:

Please email a copy of one (1) Minute Order to liwalter@countyofsb.org

Attachments:

Attachment A: Budget Revision Request (BJE No. 0010101)

Attachment B: FY 22-23 Penalty Invoice (No. 23029)

Attachment C: Department of State Hospitals Letter (No. 23-003)

Attachment D: Growth Cap Expenditure Plan Guidance

Authored by:

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