Proposed Solution Strategy for Working Group #2:
DSH Diversion Program
Presumptive Eligibility Strategy

Background and Issue(s):

The Department of State Hospital's (DSH's) is convening Workgroup #2, *Diversion and Community Based Restoration*, to identify short-term solutions to reduce the current felony incompetent to stand trial (FIST) waitlist.[1] These solutions should maximize diversion into community-based treatment, steering individuals away from reliance on criminal justice and State Hospital settings for care and treatment. DSH has estimated that 47 percent of the 1,700 individuals on the current FIST waitlist could be successfully treated with antipsychotics to prepare them for participation in the DSH Diversion Program. To date, DSH has funded 820 treatment slots in the counties that are currently participating in the DSH Diversion Program; however, the most of these slots remain unfilled despite the notion that almost half of these individuals should be eligible for diversion.[2,3]

Actionable ideas or solutions:

A short- to medium-term strategy could be to implement a DSH Diversion Program Presumptive Eligibility Strategy for program enrollment,[4] with intensive training and technical assistance provided to counties that includes real-time support in preventing or responding to issues that arise, and safeguards to ensure safety and security for all who are involved. Descriptions of each of the components for this approach are as follows:

- **Presumptive Eligibility** – Rather than engaging in an eligibility process that requires substantiation of reasons why an individual *may* be eligible for a DSH Diversion Program, which has become quite lengthy and has significantly slowed access to treatment, it would be assumed that all individuals currently on the waitlist *are* eligible for the DSH Diversion Program, and specified exemptions would have to be sought in order to exclude them from the program. A time-limited workgroup comprised of subject matter experts could be convened to identify the exemption criteria, and a time frame would be established by which the presumptive transfers would occur (e.g., within 30 days). *Note: Individuals who would benefit more from SUD or regional center services would be transferred/connected to the most appropriate treatment.*

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[1] See the CHHS site for more information on the workgroups.

[2] The RAND Corporation conducted a study in 2019 of Los Angeles County's jail mental health population to identify who would likely be eligible for diversion in a community based treatment setting, finding that an estimated 61 percent of the jail mental health population were likely appropriate candidates for diversion; 7 percent were potentially appropriate; and 32 percent were likely not appropriate candidates for diversion.

[3] After conducting a survey and convening case conferences with diversion partners, DSH learned that the primary barrier to diverting FISTs into the DSH Diversion Program is the fact that individuals on waitlist are not yet psychiatrically stable enough for diversion services, particularly since Involuntary Medication Orders are not being utilized.

[4] This solution assumes the stabilization of individuals in preparation for diversion programming, which is largely being addressed in Workgroup #1, Early Access to Treatment and Stabilization for Individuals Found Incompetent to Stand Trial (IST) on Felony Charges.

- **Intensive Subject Matter Expert Technical Assistance** – Given the associated perceived and actual risks associated with the FIST population, resources could be deployed to provide 24/7, immediate, real-time technical assistance if/when issues arise to prevent/mitigate harm.
- **Forensic Peer Support Specialists (FPS)** – FPSs could work with individuals at every point in the process, from initial contact, to jail medication consent, to outpatient community based treatment and beyond. Specifically for the IST waitlist, FPSs could be brought in (possibly virtually) to communicate with individuals to persuade them to comply with medication orders, and then continue supporting their individuals engage in community based treatment.
- **Probation Partnership** – Some counties have considered establishing partnerships with County Probation for the provision of supervision to ensure safety and security for all involved. This approach could be incorporated more formally as a DSH Diversion Program component.

Additional Considerations

- **Psychiatric Advanced Directives** (PAD) – As part of another component of the DSH Diversion Program, funds could be dedicated to provide program participants (once stabilized) with access to resources to develop and establish a consumer-driven PAD that may be implemented in future instances if/when an participant becomes symptomatic so as to minimize/avoid future law enforcement contact.
- **Housing** – State and local housing agencies (e.g., Housing and Community Development, Homeless Coordinating and Financing Council, CA Department of Social Services, Department of Health Care Services and local Continuums of Care) should be engaged in the DSH Diversion Program to provide expertise on available funding, eligibility, and housing system navigation. A priority should be made to dedicate existing housing funds towards the behavioral health population, including DSH Diversion Program participants. Crisis housing strategies employed during the pandemic (quarantine housing) should be evaluated for immediate use with the IST population.

Resources:

A portion of the $75 million one-time General Fund allocation for the purposes of implementing solutions identified by the IST Workgroup to address the IST patient waitlist could be used to secure industry subject matter experts[5] to participate in the time-limited workgroup to develop the DSH Diversion Program Presumptive Eligibility exemption criteria, as well as secure and deploy the "real-time" technical assistance. These funds can also be used to augment the existing DSH Diversion Program contracts to fund additional slots (if the DSH 1.0 expansion is not sufficient), add Forensic Peer Support Specialists and Probation (or other appropriate law enforcement) staffing, as well as to fund resources for the development of PADs. Significant federal and State investments have been made to address housing needs in California – these sources should be considered first before seeking additional funds (e.g., IST Solutions Workgroup funding).

[5] Public service sector participants from behavioral health and criminal justice would participate as part of their operational duties.

Tracking Data:

The program participation data that is already being captured for the DSH Diversion Program, along with the FIST waitlist data, should be used to track progress in reducing the waitlist. It would also be helpful to track data on exemptions to determine which are being most frequently used to exclude individuals from the DSH Diversion program. Additional data could be captured on the technical assistance requests (types, frequency, duration, outcomes), the need for County Probation (encounters, interventions, outcomes), the completion of PADs, and program participant housing status (if not already captured).