



Agenda Date: _____

Board Briefing Report

DATE: August 4, 2025
TO: Board of Supervisors
FROM: Susan Holt, Director, Department of Behavioral Health Services
SUBJECT: Diversion and Impacts of the Growth Cap

EXECUTIVE SUMMARY

The purpose of this briefing is to provide information regarding the recidivism data for persons served through the diversion program funded by the Department of State Hospitals (DSH) and an overview of the growth cap. The current statewide success rate for individuals deemed incompetent to stand trial (IST) admitted to a DSH-funded diversion or community based restoration (CBR) program is 60%. Of the 80 Fresno County persons served enrolled in the diversion program, 40 individuals participated in the program, 40 enrolled and did not begin services, 34 graduated, and 6 of those graduates reoffended. A total of 28 individuals did not reoffend after graduating from the diversion program. The growth cap is an effort made by the State to reduce the growing number of individuals committed to DSH by creating a baseline number per county and penalizes counties who go over the baseline. Participation in certain DSH-funded programs such as diversion reduces the penalty.

HISTORY - DIVERSION PROGRAM

The passage of Assembly Bill (AB) 1810 and Senate Bill (SB 215) in 2018 created a pathway for the courts to divert individuals living with serious mental illness (SMI) who were charged with certain felony or misdemeanor crimes away from the justice system. Individuals who are diverted to treatment by the court must participate in treatment for up to a year if charged with a misdemeanor or up to two years if charged with a felony. Upon successful completion of the diversion program, criminal charges are dismissed. If the individual is not successful in completing the diversion program, the criminal proceedings are reinstated.

PC 1001.36 and WIC 4361 authorized DSH to fund pilot diversion programs for counties who opted to participate. Fresno County applied for the pilot funding in 2018 and became effective from September 22, 2020, to June 30, 2025. The pilot program's target population was individuals with eligible felony charges found IST and those whom the courts deem likely to be found IST on their current eligible felony charges. Additionally, individuals must meet the following criteria to qualify for the pilot program:

- Face a current felony charge and be found IST or potentially found IST
- Have a primary diagnosis of schizophrenia, schizoaffective disorder, or bipolar disorder
- Have a significant relationship between the SMI symptoms and the charged offense
- Not pose an unreasonable risk to public safety

Certain charges such as voluntary manslaughter and rape will automatically exclude participants from diversion. Additional charges that disqualify an individual from participating in diversion are listed in PC 1001.36. The pilot DSH diversion program ended on June 30, 2025.

On June 24, 2025, your Board approved the funding agreement for the DSH-funded permanent diversion program. DSH made a minor change in the permanent program eligibility criteria. In the permanent program eligibility criteria, DSH removed eligibility for individuals with a felony charge who are likely to be found IST. In the DSH-funded permanent diversion program, the target population is only individuals charged with certain felonies who are found IST. The pilot program and the permanent program have the same exclusions for participation.

BACKGROUND – THE GROWTH CAP

In accordance with AB 133 (Chapter 143, Statutes of 2021) and SB 184 (Chapter 47, Statutes of 2022), DSH established a baseline number of felony IST determinations for each county and if a county goes over their established baseline number, a penalty will be incurred. Participation in certain DSH-funded programs such as diversion reduces the penalty.

DSH utilized the total annual felony IST determinations made in fiscal year (FY) 2021-22 to create each county's baseline. Fresno County's baseline number is 106. Near the end of May for each FY, DSH will invoice the county for the prior FY's felony IST determinations. Fresno County's felony IST determinations for FY 2023-24 was 162. Fresno County had 56 individuals over the baseline number.

Counties may receive partial credit for individuals who are diverted to DSH-funded programs such as diversion or community based restoration (CBR). CBR is a program that provides services to restore individuals found IST to competency in a community setting instead of an inpatient setting. The formula to calculate for partial credit is provided below:

- $[\# \text{ Felony IST who were diverted}] \times 60\% \times 50\% = [\text{Credit for county}]$

The percentages for the formula above came from calculations made by DSH regarding the success rate of DSH-funded programs and the initial work that DSH provides for IST individuals to stabilize them for lower levels of treatment. The current statewide success rate for IST individuals admitted to a DSH-funded diversion or CBR program is 60%. The offset of 50% is to incorporate the work DSH provides to initiate treatment for IST individual stabilization. The credit allows for the final felony IST determinations for the FY to be reduced.

Once the final felony IST determination is found, the number is multiplied by the bed rate and the average length of stay. The penalty rate per IST individual is \$113,000. Depending on what programs the county operates, the penalty rate may decrease.

Fresno County's penalty fee is \$96,000 because the County operates a Diversion program and has access to an Early Access Stabilization Service (EASS) program within the county. The EASS program is operated by California Forensic Medical Group, Incorporated (Wellpath), Fresno County's current medical and behavioral health provider in both the adult jail and juvenile justice campus.

The current rate application is stated below:

- The first four IST determinations over baselines – no penalty fee
- The fifth, sixth, and seventh IST determinations over baseline – Counties must pay 50% of the penalty fee per IST
- The eighth and ninth IST determinations over baseline – Counties must pay 75% of the penalty fee per IST

- The tenth and all subsequent IST determinations over baseline – Counties must pay 100% of the penalty fee per IST
- The statewide median IST rate will be calculated along with the IST rate for each County
 - Counties with a median IST rate below the statewide median IST rate will receive a lower penalty that is adjusted down based on the proportionate value of the County's IST rate compared to the statewide median IST rate.
 - Counties with a median IST rate higher than the statewide median IST rate will not see any change in their final penalty fee.

Starting with FY 2026-27, counties with a DSH-funded diversion or CBR program will pay 100% of the rate for every third and subsequent felony IST over baseline. If the county does not have a DSH-funded diversion or CBR program, the county will pay 150% of the rate.

Fresno County's total penalty fee for fiscal year 2023-2024 felony IST determinations over baseline is \$4,800,000. The penalty fees are put into a fund overseen by DSH and counties may draw back down penalty funds, subject to approval, for reinvestment in the system of care to further divert individuals. After the penalty is paid, counties may submit a program plan to DSH detailing how they will utilize the funds. The plan must address how the usage will divert individuals with SMI away from the criminal justice system and lead to a reduction of felony IST determinations. Only counties that have exceeded its growth cap will be eligible to apply for the funds. If the program plan is approved by DSH and funds are released back to the county, an expenditure report is due annually to DSH.

Fresno County Department of Behavioral Health (DBH) does not control the process for determination of IST. That process occurs through the Court when defense counsel declares a doubt as to the person's competency. The evaluations for competency are not controlled by DBH; they are ordered by the Court at the request of defense counsel. Fresno County's median rate for IST determinations in FY 2023-2024 is 15.9 while the statewide median rate is 15.3.

DBH released payment for the penalty fees to DSH and received confirmation of payment receipt by DSH on July 16, 2025. Fresno County DBH is working with DSH on a program plan to draw back down the penalty funds for reinvestment in the criminal justice population.

STATUS - PILOT DIVERSION STATISTICS

A total of 80 individuals were eligible for the pilot diversion program and enrolled, 40 individuals participated, and 34 individuals graduated from the program. Of the 40 individuals who participated, only 6 individuals did not complete the program. Individuals who fail to participate or complete the diversion program will return to court proceedings and the court will determine if their criminal charges will be reinstated or to reevaluate treatment options. The majority of participants who graduated from the pilot program did not reoffend. Of the individuals who graduated, below is information on the types of felonies the individuals faced before being diverted, and recidivism data:

Overview - Felony Charge Prior to Diversion		
Felony Charge*	Count of Participants	Percentage of Participants
PC 245 Assault with a Deadly Weapon	8	24%
PC 422 Criminal Threats	8	24%
PC 451 Arson	8	24%
PC 594 Vandalism	7	21%
PC 69 Deterring Officer by Threat/Violence	4	12%

*Note: Individuals may be charged with more than one felony.

Recidivism Data		
Category*	Count of Participants	Percentage of Participants
Individuals Who Reoffended	6	18%
Individuals Who Reoffended – Felony Charge	6	18%
Individuals Who Reoffended – Misdemeanor Charge	3	9%

*Note: Individuals may have received both a felony and a misdemeanor charge when they reoffended.

Recidivism Data – Overview of Charges		
Charge Type*	Count of Participants	Percentage of Participants
PC 245 Assault with a Deadly Weapon	2	20%
PC 422 Criminal Threats	2	20%
PC 451 Arson	0	0%
PC 594 Vandalism	2	20%
PC 69 Deterring Officer by Threat/ Violence	0	0%
PC 496 Receiving Stolen Property-Motor Vehicle	2	20%
VC 10851 Stolen Vehicle	3	30%
VC 28002 Evading a Peace Officer	3	30%

*Note: Of those who reoffended, 4 individuals received more than one charge, and 2 individuals reoffended more than once.

A total of 82% did not reoffend after graduating from diversion.

REFERENCE MATERIAL:

BAI #48, June 24, 2025

CONTACT

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