

**OFFICE OF PATIENTS' RIGHTS
Protection & Advocacy, Inc.
100 Howe Avenue, Suite 210N
Sacramento, CA 95825-8202
Telephone (916) 575-1610
FAX (916) 575-1613**

M E M O R A N D U M

TO: Patients' Rights Advocates

FROM: Michele Mudgett, Patients' Rights Specialist
Office of Patients' Rights

RE: Advocacy Tools - Penal Code 1026 - NGI

DATE: April 26, 2001

Enclosed you will find an overview on the commitment scheme of Penal Code 1026, "Not Guilty by Reason of Insanity". This commitment is primarily placed into one of the four State Hospitals, but may be temporarily placed in a county jail during hearings or other court appearances with the committing courts. Community placement can also be a part of this commitment scheme.

Persons committed under this section of the Penal Code are committed directly from the Superior Courts. The information provided in this letter is a summary only; for greater detail see the applicable statute and relevant case law.

PC 1026 - NOT GUILTY BY REASON OF INSANITY:

Not Guilty by Reason of Insanity is a determination made by the court stating that the defendant committed a crime and was insane at the time the crime was committed. The court commits the defendant to the Department of Mental Health or, more specifically, a State Hospital (or other treatment facility) for the care and treatment of the Mental Disorder. Committed Directly from Superior Courts.

DEFINITION OF INSANITY:

The insanity defense is used primarily in the criminal context and refers to a mental condition that excuses a person from criminal responsibility. It is not used as a clinical concept but rather as a legal definition. For the court to find a defendant not guilty by reason of insanity, the defendant must prove by a preponderance of the evidence that he/she was either:

Incapable of knowing or understanding the nature and the quality of the act;

and/or (PC § 25 states the two-prong test in the conjunctive ("and"), the California Supreme Court has held that the disjunctive ("or") is correct and that both prongs remain alternatives.)

Incapable of distinguishing right from wrong at the time he/she committed the offense.

LENGTH OF TIME SERVED:

Once sentenced to a treatment facility as NGI, 6 months must be served before the patient becomes eligible for outpatient treatment. The maximum term of commitment for an insanity plea is the longest sentence that could have been received for the crime if the defendant had been charged and placed into the criminal justice system. In addition, there is no plea bargaining with this type of commitment. All enhancements and consecutive sentences will be added and imposed in the maximum term. The inpatient treatment term cannot be reduced for good behavior.

If the defendant is considered not dangerous, the defendant can be placed on outpatient treatment prior to release, and release can occur prior to end of maximum term. **The court can extend inpatient treatment term if the patient is**

considered dangerous at the end of the original commitment and if the original crime was a felony involving physical harm or threat of physical harm.

In the criminal justice system, one can earn "conduct" or "work credits" and be released on an "Earliest possible release date". This is not true for the mental health system. A court may decide to extend this commitment scheme for two years beyond the maximum time. The crime must have been a felony, and because of a mental condition, the patient is a danger to others. This extension can be done repeatedly. The NGI plea often results in a life sentence because of the strict application of the statutory scheme.

RELEASE:

Under PC § 1026.1, the committing court may order a release under one or more of the following:

Upon expiration of the maximum term of the commitment, as provided under PC § 1026.5, unless the term is extended under PC § 1026.5(b).

Upon a finding of restoration of sanity pursuant to PC § 1026.2, a *two step process.

Upon conditional release to outpatient status (CONREP) pursuant to PC § **1603, § 1604.

***The two step process:**

By recommendation of the Medical Director or by petition from the patient, (after serving 6 months and not more than once a year), the court finds that the individual: **"no longer poses a danger to self or others because of a mental disorder"**.

1. The court then orders a release to CONREP for minimum one year,
2. When the court finds the patient "fully restored" to sanity, they are then unconditionally released from CONREP.

When the patient files a petition (Restoration of sanity hearing and/or Requesting outpatient release), the court cannot / will not accept the petition without first obtaining a written recommendation from the Medical Director of the State Hospital, or from the CONREP director if the patient is on outpatient status.

**Penal Code §§1603/1604:

This follows the same criteria set for the restoration of sanity procedures. The big difference is that the petition only states that the person is no longer a danger to themselves or others and it is a conditional release. Nothing is noted about a Mental Disorder or having sanity restored, which may be why it is a "conditional release" and not freedom.

A writ of habeas corpus may be filed at anytime, for example, when a patient feels he is being unlawfully incarcerated, lack of treatment, inappropriate placement, or no longer mentally ill.

DEPARTMENT OF MENTAL HEALTH DECISIONS TO TRANSFER
PC § 1026:

(People v. Cleveland, Supra, 27 Cal.App.3d at p. 833, 104 Cal.Rptr. at p. 107)

Also known as the “Cleveland Decision”. This is used rarely; here is a summary of how it is used. The patient must have been serving a previous sentence in the criminal justice system and received a new charge of a new crime while serving time. He/she then pleads NGI on the new crime and gets transferred to a Mental Health Treatment facility. At some point, due to various reasons, the patient is sent back to court under the Cleveland Decision. The court then determines if the sentence is to be completed in the criminal justice (prison system). Since the purpose of the confinement under section 1026 and 1026a is to protect society and afford an opportunity for psychiatric treatment, and since the Department of Corrections has facilities that can be utilized for both purposes,...it is concluded that, in the eventuality under consideration, it would serve the purposes of all the statutes if the confinement, under all counts, were in the state prison. (Also utilized if multiple charges are filed and the defendant is found NGI on some but not all).

WELFARE AND INSTITUTIONS CODE § 7301:

This section also allows the Department of Mental Health to facilitate a transfer of a PC 1026 patient into the criminal justice system but the criterion is different from the Cleveland Decision. The patient does not have to have any pending sentence to serve with a prison. This transfer is utilized when; "Whenever, in the opinion of the director Mental Health and with the approval of the Director of Corrections, any person who has been committed to a state hospital pursuant to provisions of the Penal Code, needs care and treatment under conditions of custodial security which can be better provided within the Department of Corrections, such person may be transferred from jurisdiction." No court hearings are necessary only the internal reviews each department requires within their own procedures.

F:\DOCS\OPR\Informational Letters\1026-NGI-info letter-4-26-01.doc