

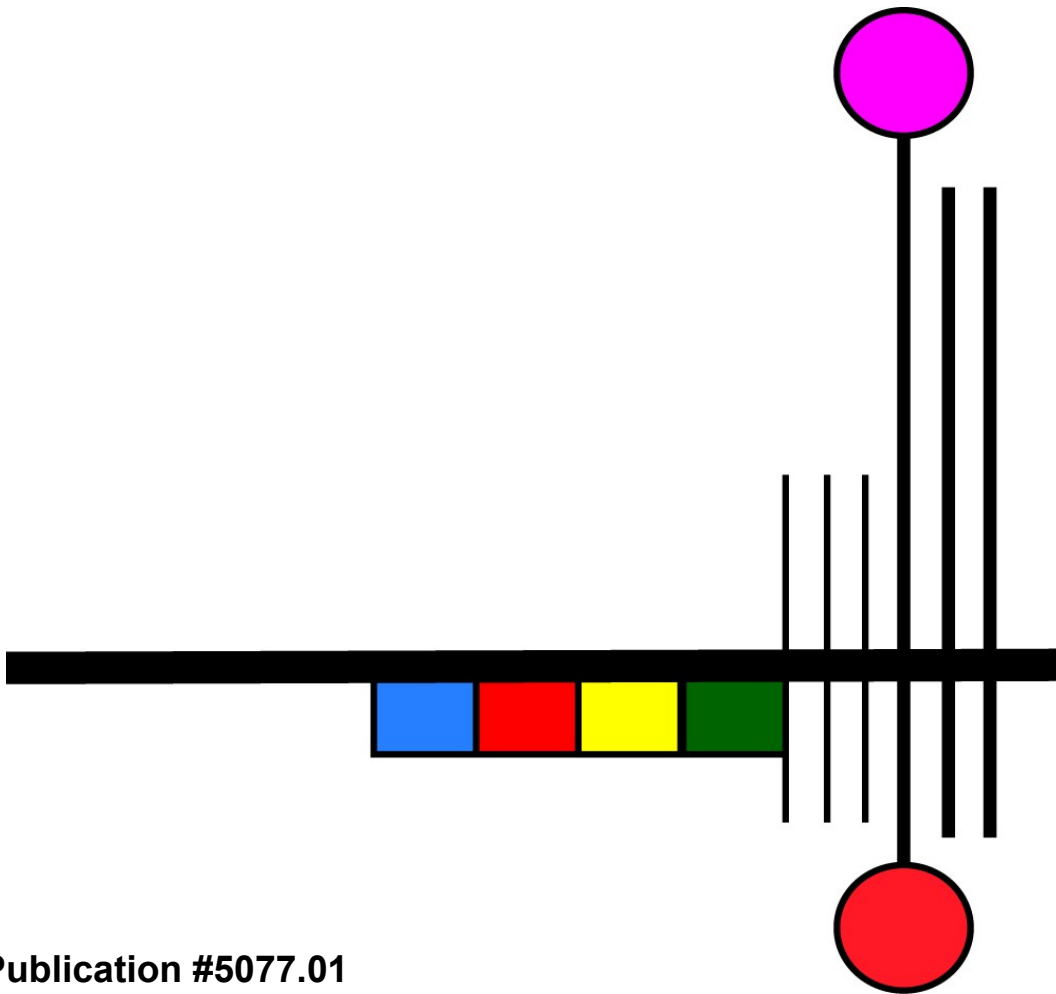


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# FORENSIC MENTAL HEALTH LEGAL ISSUES



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Disability Rights California is the agency appointed under federal law to protect the civil, legal and service rights of Californians with disabilities. Disability Rights California provides information and technical assistance and direct representation of persons with developmental and mental disabilities.

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# INTRODUCTION

When a defendant with a mental disability enters the criminal justice system, many of the safeguards afforded to criminal defendants under due process, equal protection, and constitutional criminal procedure change. The merging of law and psychiatry has created a hybrid class of defendants who are sometimes treated like civilly committed mental health patients, while at other times like criminal defendants.

The rights and constitutional protections afforded to these “forensic patients” can and do vary according to where they are in the criminal justice process and how they are classified. For instance, the law holds insanity acquittees unaccountable for their actions and imposes mandatory treatment in lieu of punishment. However, they are frequently confined with fewer rights, and for longer periods, than their criminal defendant counterparts.<sup>1</sup> Moreover, once confined, many find themselves facing a Kafka-like situation where they have to prove a negative (i.e., that they are no longer dangerous or no longer mentally ill), in order to be released from the system, and where the legal burden is quite difficult, if not impossible to meet.

People with mental disabilities who enter the criminal justice system are particularly vulnerable to abuse and neglect. They are often ignored, victimized, and warehoused with few treatment options other than medication. Unlike other criminal defendants, they bear a double burden: the stigma associated with mental illness, and the stigma associated with being accused of committing a crime – what many call the “mad and bad” clients.

All too often, the rights of forensic patients are ignored and neglected - even by well-intentioned defense attorneys. Such attorneys may show a laxness toward upholding these clients’ civil and constitutional rights either because they do not understand the nature of mental disability, or because they believe that treatment is in their clients’ “best interest.” Defense attorneys should recognize that getting their clients committed into the mental health system might not be best for them in the long run, especially when they are facing minor criminal charges.

The forensic mental health population in California generally consists of patients confined under five types of commitments: (1) Incompetent to Stand Trial (IST); (2) Not Guilty by Reason of Insanity (NGRI); (3) Mentally Disordered Offenders (MDO); (4) Mentally Disordered Offenders (MDO); and (5) Sexually

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<sup>1</sup> A 1995 study found that in California, the median length of confinement for insanity acquittees was 1,359 days, and the same figure for those unsuccessful in their NGRI pleas (and thus found guilty) was 610 days. Silver, E., Punishment or Treatment? Comparing the Lengths of Confinement of Successful and Unsuccessful Insanity Defendants, 19 *Law and Human Behavior* 381 (1995).

Violent Predators (SVP). A previous statutory classification, Mentally Disordered Sex Offenders (MDSO), was repealed in 1982. Prisoners with mental disabilities may also be transferred from the Department of Corrections and Rehabilitation (CDCR) to the Department of Mental Health (DMH) under Penal Code section 2684. However, these individuals are not addressed in this manual because they retain their legal status as prisoners rather than DMH patients.

In California, the state hospital system provides inpatient commitment under the jurisdiction of the DMH, with most patients residing at Atascadero, Patton, Metropolitan, Napa, or Coalinga State Hospitals. The DMH also provides outpatient commitment through the Conditional Release Program (CONREP), a statewide program managed by the Office of Forensic Services. In addition, the DMH provides and maintains treatment programs for patients at the California Medical Facility at Vacaville, while the CDCR provides varying levels of mental health treatment at the state prisons.<sup>2</sup>

This publication summarizes the procedures and rights afforded to the forensic mental health population in California.<sup>3</sup> It is designed to be an introduction to the field as well as a reference guide for forensic mental health patients, advocates, and attorneys. It is not meant to be an exclusive or exhaustive legal resource and, of course, is not a substitute for research in each individual case. Disability Rights California welcomes your questions and comments about this publication at 800-776-5746.

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<sup>2</sup> The following websites provide information about agency structure and facilities. For the Department of Mental Health: [www.dmh.cahwnet.gov](http://www.dmh.cahwnet.gov). For the Department of Corrections and Rehabilitation: [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

<sup>3</sup> For the sake of readability, this publication uses the masculine and feminine personal pronouns in alternate chapters.