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March 8, 2021

VIA EMAIL

Honorable Board of Supervisors
Los Angeles County
Hall of Administration, Room 383
Los Angeles, CA 900012

**Re: Support for Community-Based Services for
Felony Incompetent to Stand Trial Individuals**

Dear Chairperson Solis and Esteemed Board of Supervisors:

Disability Rights California (DRC) joins the ACLU, Justice LA, and the National Alliance on Mental Illness (NAMI) in requesting your support for the Office of Diversion and Reentry (ODR) to provide community-based services for persons considered felony incompetent to stand trial and:

- Immediately accept \$34.7 million in funding from the Department of State Hospitals to enable ODR to provide services to at least 200 more felony incompetent to stand trial individuals;
- Accept additional funding that would allow LA County to participate in the Community Care Demonstration Project for the Felony Incompetent to Stand (IST) Trial pilot program as outlined in the Governor's proposed budget;
- Conduct a public hearing, engage stakeholders, and fully disclose all relevant information if the Board believes there are legal or fiscal concerns related to LA County's participation and/or ODR providing these services.

As California's designated protection and advocacy agency, we represent individuals with serious mental illness in all settings; from jails, prisons and immigration detention centers to state mental hospitals and board and care homes. We investigate abuse incidents; litigate and engage in public policy advocacy to expand the availability of housing, employment, health and mental health services; and pro-actively address other barriers facing our clients.

For decades, the felony incompetent to stand trial (IST) population has represented some of our most vulnerable, underserved, and overlooked clients. We routinely encounter these individuals languishing for months in jails throughout California, and observe the grave deterioration of their physical and mental health. These clients experience some of the worst abuse, including excessive solitary confinement and physical restraint, and jail conditions leading to suicide deaths. The combination of their involvement in the criminal legal system along with their serious mental illness has proven intractable for many county mental health departments to successfully address.

Not accepting funding for ODR will mean reverting to the previous failed model of serving felony IST individuals

For years, most county mental health departments, including Los Angeles, relied primarily on the state mental hospital system to restore an individual to competency. The state hospitals house other justice-involved individuals, many coming from the state prison system, and resemble correctional rather than therapeutic environments. In most counties, persons found incompetent to stand trial wait in jail until a bed at a state hospital opens up. Competency restoration in the state hospital means getting the person to be able to minimally participate in their defense (understand the difference between judge, counsel, jury) and possibly be involuntarily medicated. If a person is restored to competency, they are returned to jail to await resolution of their criminal case. While awaiting resolution of their case, individuals can decompensate again in jail, and the cycle continues

By contrast, LA County's ODR represents a creative, compassionate model that has demonstrated a commitment to community-based restoration, with the ultimate goal of allowing individuals to reintegrate back into society.

ODR's program embodies the spirit of criminal justice reform that ends the reliance on carceral settings.

ODR's community-based services for IST individuals are effective, fiscally efficient, and maintain public safety

The LA County Board of Supervisors should accept state funding and allow ODR to continue its community-based treatment of the incompetent to stand trial (IST) population because it is more effective at preventing crime and lowering recidivism than jails and state mental hospitals.

When ODR obtains community-based treatment for IST individuals in lieu of jail and state mental hospitals, IST individuals receive a plan to help them stay out of the justice system, including mental health treatment and housing. Of 442 felony IST individuals to whom they provided community-based services, ODR successfully prevented 80% of them from returning to jail or prison.¹ Accepting state funding to enhance community-based treatment is a significant step forward in reducing crime and recidivism.

In the long-term, it is fiscally responsible for LA County to invest in community-based services up front, and it would be a wasted opportunity to turn down state funding to expand these programs. Diverting these individuals to community placement with housing is less expensive than jail or inpatient hospital placement.²

Alameda County Superior Court's April 19, 2019 order in *Stiavetti v. Ahlin* held that constitutional due process requires the Department of State Hospitals and the Department of Developmental Services to provide substantive competency restoration services within 28 days of taking responsibility for an individual found IST. As it stands, IST individuals have been waiting up to *one year* to be admitted to a state mental hospital due to COVID-19. ODR, with additional funding, could not only alleviate some of this burden efficiently and

¹ Department of Health Services, Los Angeles County, Office of Diversion and Reentry Clinical Programs Dashboard. January 2021. http://file.lacounty.gov/SDSInter/dhs/1072371_ClinicalProgramsDashboard.pdf

² Neil Gowensmith et al., *Forensic Mental Health Consultant Review Final Report*, at 29 (June 30, 2014), <https://www.dshs.wa.gov/sites/default/files/BHSIA/WSH/GroundswellReport6.30.14.pdf> (survey estimated savings at more than \$60,000 per participant for outpatient competency restoration); cf. Amanda Wik, *Alternatives to Inpatient Competency Restoration Programs: Jail-Based Competency Restoration Programs*, at 9 (Oct. 31, 2018), https://www.nri-inc.org/media/1500/jbcr_website-format_oct2018.pdf.

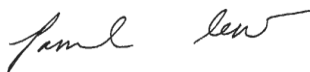
effectively, but also help ensure that LA County is upholding the constitutional rights of IST individuals.

Conclusion

Disability Rights California urges the Board of Supervisors to accept state funding for community-based restoration of competency for felony incompetent to stand trial individuals and continue to support the important and impactful work of ODR. We invite the Board to see the difference for themselves and decide which environment is more conducive for rehabilitation: Kress House, an ODR program which resembles a college residence, with natural lighting, comfortable and open places to relax and talk, ample programming, and an emphasis on client dignity? Or a jail or state hospital setting for which securing and controlling its population is the primary concern?

If the Board believes there are obstacles to moving forward, we call for full and complete transparency in the form of a public hearing for the Board to disclose any barriers to move forward with accepting the state funding and continuing the work of ODR. We further request immediate engagement with stakeholders such as the bench officers, prosecutors, and defenders who have observed the dramatic difference brought by ODR, individuals with lived experience both as participants in ODR programs and as incarcerated individuals, and advocacy organizations such as the ACLU, NAMI, Justice LA, and Disability Rights California.

Sincerely,



Pamila Lew
Senior Attorney

CC: Christina Ghaly, M.D., Director, Department of Health Services
Judge Songhai Armstead (Ret.), Director, Alternatives to Incarceration
Judge Peter Espinoza (Ret.), Director, Office of Diversion and Reentry
Jonathan Sherin, M.D., Ph.D., Director, Department of Mental Health