



*California's Protection & Advocacy System
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Self-Advocacy for Conditional Release Program (CONREP)

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Self-Advocacy for CONREP

1. What is CONREP?

The forensic conditional release program, also known as CONREP, allows individuals who have been committed to a state hospital as part of a criminal proceeding to receive treatment in the community under supervision. You can be placed on CONREP if you have been found:

- Not Guilty By Reason of Insanity (NGI)
- Incompetent to Stand Trial (IST)
- Mentally Disordered Offender (MDO)
- Mentally Disordered Sex Offender (MDSO)
- Sexually Violent Predator (SVP)

The Department of State Hospitals (DSH) administers the CONREP program. DSH can either provide services directly or through a contract with private providers or local governments. Welfare and Institutions Code § 4360; Penal Code § 1615. Typically, DSH contracts with a county to provide a local CONREP program. A County's CONREP program can be administered by the county or by a private or non-profit agency.

2. How Do I Get into CONREP?

Most people enter CONREP on the recommendation from the director of their state hospital or treatment facility. The director will only do this if they believe you are no longer dangerous due to your mental illness. After making a recommendation to the court, the court will then hold a hearing and decide whether to place you on outpatient status.

Any person committed to DSH on a forensic commitment may become eligible for CONREP, but how and when a person becomes eligible depends on their original criminal charges and the person's commitment status. You may be eligible for CONREP from the first day of your commitment if you have been committed in relation to a misdemeanor or a felony that **does not** involve death, great bodily injury, or any act that involved a serious threat of bodily harm to another person. Penal Code § 1601(b). Otherwise, you are not eligible until you have spent at least 180 days confined to a treatment facility, **unless** the court finds a placement, including CONREP, which would provide you with more appropriate mental health treatment while not posing a danger to the health or safety of others. Penal Code § 1601(a).

How you get onto CONREP differs based on your commitment status.

(1) Incompetent to Stand Trial (IST) Commitments

When ordering a person to receive competency treatment, the court may place the person in CONREP. However, how soon the person may enter CONREP depends on what offense they are charged with, also known as their instant offense.

For any charge not included in Penal Code § 1601(a), a court may order a person directly into CONREP. This is true of both misdemeanor and felony charges. Penal Code § 1601(b).

You should contact your appointed attorney to see if CONREP is an option for competency treatment.

(2) Not Guilty by Reason of Insanity (NGI) Commitments

After a court makes a finding that you are NGI, the court will require a mental health professional to evaluate you and submit a report to the court within 15 days of the court's order for the evaluation. Based on that report, the court will either order you into CONREP or to a treatment facility. Penal Code § 1026.

If the court orders you to the state hospital as NGI, you may still enter CONREP if the court finds that you would not be a danger to yourself or others under supervision in the community due to a mental defect, disease, or disorder. The court makes this determination at a hearing. To get this hearing, your treatment team must submit an application and recommendation that you enter outpatient treatment. You may also submit your own petition for a hearing, known as a **petition for restoration of sanity**. Penal Code § 1026.2. If the court denies your application, you may not file another petition or application until one year from the date of the denial. Penal Code § 1026.2(j).

Submitting Your Own Petition for Restoration of Sanity

If your treatment team or the director of your treatment facility will not recommend you for CONREP, you can submit your own **petition for restoration of sanity**.

“Restoration of sanity” does not necessarily mean that you have recovered from your mental disorder. The standard for release is whether you would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. Penal Code § 1026.2.

To initiate the restoration process, an NGI acquittee (or a treatment facility or community program director) must file a petition for restoration of sanity. Penal Code § 1026(a). You bear the burden of proving this lack of dangerousness by a preponderance of the evidence (meaning the evidence weighs at least 51% in your favor). Penal Code § 1026.2(e).

You may file for restoration of sanity in a two-step process where:

1. The acquittee initiates a Restoration Petition under Penal Code § 1026.2 to determine eligibility for CONREP, and if successful,
2. After one year in CONREP, a jury trial will determine if the acquittee should be fully restored with unconditional release.

NGI patients can be released to CONREP under Penal Code §§ 1600-04 or as the first step in the two-part restoration of sanity process under Penal Code § 1026.2. In some circumstances, release under § 1026.2 may be easier, as it does not require recommendations from both the hospital director and the community program director. Penal Code § 1026.2(a); *People v. Tilbury* (1991) 54 Cal.3d 56, 72.

What happens at my CONREP placement hearing?

At this hearing, you do not have the right to a jury trial. *People v. Tilbury*, 54 Cal.3d 56 (1994); *Barnes v. Superior Court*, 186 Cal.App.3d 969 (Ct. App. 1986). If you want a jury trial, the prosecutor must agree to your request.

You must prove to the court that you will not be a danger to the health and safety of others while in CONREP. You will have to show this by the legal standard of a **preponderance of evidence**. Penal Code § 1026.2 (k); *Sword*, 29 Cal.App.4th at 621. This means **that the court must believe your evidence has at least a 51% chance of being true**. This is different from a criminal trial. At your criminal trial, the prosecutor had to prove that you did commit the crime, and the legal standard was **beyond a reasonable doubt**.

Even if CONREP and the hospital director recommend you for CONREP, approval by the court is not automatic. Penal Code § 1604(d). The court will decide if it is likely that you have met the conditions based on all the evidence presented.

(3) Mentally Disordered Offender (MDO) Commitments

People committed as MDO have two separate opportunities to enter CONREP. First, a court may order you to CONREP when you are initially found to be MDO. If the court does not initially order you to CONREP, a court may order you into CONREP after an extension hearing.

CONREP as Condition of Parole

If you are ordered to receive treatment, you will receive inpatient treatment unless DSH certifies to the Board of Parole Hearings (BPH) that they reasonably believe you can be treated safely and effectively in outpatient treatment. In that case, you will be ordered to CONREP. Penal Code § 2964(a). The BPH must also agree to permit DSH to place you on outpatient status. Penal § Code 2964.

If you are not ordered to CONREP within 60 days of being committed to DSH, you may request a hearing with the BPH to determine whether you should enter CONREP. At the hearing, DSH will have the burden to show why you need inpatient treatment rather than CONREP. Penal Code § 2964(b).

You can request an outpatient treatment hearing in front of the BPH, who will decide if you have met the conditions for CONREP. Penal Code §§ 2962 and 2966. If you disagree with their decision, you may petition for a hearing before the superior court. The court will have a hearing within 60 days after you file your petition. Penal Code § 2966(b).

CONREP Following an Extension Hearing

Though any criminal sentence you receive will have a specific length, if a court commits you to a state hospital as MDO, the court can extend your commitment so long as the state proves that you need continued treatment. This means that you can continue to be committed even after you have served the maximum length of your original criminal sentence.

If the court extends your commitment, the court may order you to CONREP. The court shall release you to CONREP if it believes that you can be safely and effectively treated on an outpatient basis. Penal Code § 2972(d).

(4) Mentally Disordered Sex Offender (MDSO) Commitments

MDSO's are unique in that the laws used to commit someone as MDSO have been repealed. This means that no one since the repeal has been committed as MDSO, but there are still people in facilities who were designated MDSO before the repeal.

If a court found that you are MDSO and that you could benefit from treatment, the court may order you to the appropriate treatment facility or program, including CONREP. Welfare and Institutions Code § 6316(a).

If you have been committed to a facility as a MDSO, you may enter CONREP through the same procedures as discussed in the MDO section above.

(5) Sexually Violent Predator (SVP) Commitments

If you have been committed to a hospital as a SVP, you may petition the court for conditional release with or without the recommendation of the Director of State Hospitals. Welfare and Institutions Code § 6608(a). You must first spend at least one year committed to a treatment facility before the court will hold a hearing on your petition. Welfare and Institutions Code § 6608(f).

At your hearing for conditional release, the court will determine whether you would be a danger to the health and safety of others. It will also determine whether you are likely to engage in sexually violent criminal behavior due to your diagnosed

mental disorder if under supervision and treatment in the community. Welfare and Institutions Code at 6608(g). You have the burden of proving by a preponderance of the evidence that you meet both of these standards. Welfare and Institutions Code at 6608(k). However, if your annual mental health examination report shows that conditional release would be in your best interest, and that the conditions of your release would adequately protect the community, the burden will be on the state to prove that your conditional release would **not** be appropriate. The state must prove this with a preponderance of the evidence. Welfare and Institutions Code at 6608(k)

3. **How Does the Court Decide If I Should Be Placed on CONREP?**

You can usually only be placed on CONREP when both your facility director and the CONREP community program director tell the court that you can be treated safely and effectively in the community. Penal Code §§ 1602-03, 2964(a), 2972. This means that they believe you will not be a danger to others and that they think you would benefit from being treated in the community. The CONREP director will submit an evaluation and treatment plan for you. Then, the court will either approve or deny your transfer to CONREP. *People v. Sword*, 29 Cal.App.4th 614, 620 (Ct. App. 1994).

CONREP is not a right, and there is no guarantee that a court will approve you for CONREP. However, you can improve your chances of entering CONREP if you know what factors the court will look at and are prepared for your hearing.

The court will consider:

- Whether you will benefit from outpatient status,
- Whether appropriate supervision and treatment can be offered in the community, and
- Whether you will be a danger to the health and safety of others. See *generally* Penal Code § 1602-03.

The main thing that the court looks at is whether you would be a danger to the community if you were put into a CONREP program. In the past, here are some factors that the courts have considered:

- A person found NGI of multiple burglaries asked to go onto CONREP. The court denied the request because the person could not show that he was not a danger to other people's property.
- Another person was denied CONREP because he still heard voices telling him to hurt other people.

- A person was denied CONREP because he said that he would not take his prescribed psychiatric medication and the medical expert stated that he would be a danger to others if he did not take the medication.
- A person was accepted into CONREP when he was able to explain his psychiatric condition and realized that even if his delusions returned, he did not need to act upon them.

4. **What Does CONREP Look for in Their Evaluations?**

Before making a recommendation to the court, a CONREP representative will conduct an evaluation of your readiness for CONREP. Above all else, CONREP will want to determine whether you can be treated in the community under supervision without presenting a danger to yourself or others due to your mental illness. CONREP has significant discretion in whom they choose to accept. Even if the hospital director says that you are ready for CONREP, CONREP can still reject you based on their own evaluation. Penal Code § 1604(d).

A person from CONREP is required to visit you during the CONREP evaluation procedure. See Forensic Conditional Release Program Policy and Procedure Manual (“CONREP Manual”) § 1310.6. This is sometimes done through video conference. CONREP Manual at § 1310.8. The evaluator will:

- Review your treatment program;
- Identify anything that prevents you from going into CONREP;
- Talk to hospital staff;
- Review your chart and talk to your treatment team to find out about your conduct and treatment history;
- Talk with you.

Here are some things CONREP looks at in its evaluation of whether you should be transferred to CONREP:

(1)Your recent behavior:

Have you had any special incident reports?

Have you been involved in any physical altercations or assaults?

Have you been placed in seclusion or restraints?

How dangerous are you to others?

Have you been going to your groups?

Are you accepting treatment?

(2) Psychiatric medications:

Do you take your medications?

Are the medications helping?

Are you having side effects from the medications?

(3) Your mental illness:

Do you know your symptoms?

Do you understand the risk factors for relapse?

Did you, or do you, have substance abuse issues?

(4) Treatment progress:

Conditional Outpatient Treatment (COT) readiness assessment

Treatment goals

Relapse prevention strategies

Privilege level

(5) Social factors:

Do you have a social network in the hospital?

Do you participate in unit activities?

Are there any relevant family issues at home?

(6) Have you been in CONREP before? How did it go?

(7) Are you motivated and willing to participate in CONREP, and would you benefit from CONREP?

(8) The crime that put you in the hospital:

Your insight about your behavior

Your feelings about what you did

Your feelings about the victims

Whether you had warning signs before you committed the offense

Your long and short term goals

(9) How are your hygiene and grooming?

(10) How well have you cooperated during the CONREP interview?

(11) Do you understand the terms and conditions of CONREP?

(12) Do you agree with CONREP's terms and conditions?

(13) Do you have a wellness and recovery plan (WRAP) for community living?

(14) Should you be restricted from living near the victim or the victim's family?

(15) What might CONREP ask me, my treatment team, clinical staff, my family, friends, victims, or the victims' families?

Have you shown or expressed remorse or empathy for your victims?

Do you accept responsibility for what you did?

Do you recognize that you have a mental illness?

Are you aware you need future help?

What will you do if you relapse? (This should be in your Wellness and Recovery Plan.)

Did your mental illness play a role in your offense?

Do you understand the need for CONREP?

Will you comply with the CONREP program?

If you have been revoked by CONREP in the past, do you understand why?

How satisfied are you with your psychiatric medications?

How do you feel about taking psychiatric medications?

CONREP may also talk to your unit staff and clinical staff. Clinical staff may include your psychiatrist, psychologist, and social worker. CONREP may also speak with your family and friends or with any victims and their families.

See CONREP Manual §§ 1310.10-1310.13.

5. What happens if I am approved for CONREP?

The CONREP program director and your hospital director will send a recommendation to the court for your placement onto CONREP. Penal Code § 1603(c). This will include a description of specific terms and conditions that you must follow if admitted to CONREP. Penal Code § 1604(b). The court will schedule a hearing within 15 judicial days from when the court gets the information. Penal

Code § 1604(c). “Judicial days” usually means working days, Monday through Friday, which are not holidays.

If your offense was a violent felony, the prosecutor must tell the victims or their next of kin where and when the hearing will be held. Penal Code § 1603(a)(3).

6. If the court denies me CONREP, can I appeal that decision?

Yes. The trial court’s decision can be appealed and reviewed for whether there was an **abuse of discretion**. This can be described as a decision that “exceeds the bounds of reason, all of the circumstances being considered.” *People v. Cross*, 127 Cal. App. 4th 63, 73 (Ct. App. 2005). This means that the decision to deny you CONREP can be reversed if the facts presented at trial do not support the court’s decision, or if the court’s decision feels arbitrary. For instance, a judge does not have to take testimony that a person is not dangerous as fact, but if the judge does find that a person is dangerous, some evidence must support that conclusion.

If you want to read more about this, here are some court cases that deal with this issue: *People v Henderson*, 187 Cal. App. 3rd 1263, 1266-1268 (Ct. App. 1986); *People v. Cross*, 127 Cal. App. 4th 63 (Ct. App. 2005); *People v. Sword*, 29 Cal.App.4th 614, 619 (1994).

If you are at Napa State Hospital, these court cases are available on the Self Help Office’s computer. If you are at a different hospital, you can ask a Patient’s Rights Advocate to help you get these court cases to read.

7. What happens if the court releases me onto CONREP?

Once the court approves you for CONREP, you are placed in an outpatient program. You must follow the terms and conditions you agreed to in your supervision and treatment plan or you can be put back in a state hospital.

If you are at a hospital under a NGI commitment, CONREP must place you in a program within 21 days of the court’s approval. Penal Code § 1026.2(h).

Some people may be placed in a transitional residential program before going into a community placement. Many CONREP participants first go through the Statewide Transitional Residential Program (STRP) before entering the community.

8. How long can I be kept on CONREP?

Technically, placement in CONREP lasts one year. But a court can extend your placement so long as it believes you do not meet the criteria for unconditional release. At the end of every year you are on CONREP, the court will hold a hearing to review your outpatient status and decide whether to keep you under supervision. Penal Code § 1606.

9. **What kind of terms and conditions can be imposed on me by CONREP?**

CONREP can impose restrictive conditions to protect the public.

Treatment usually includes:

- Individual therapy
- Group therapy
- Weekly drug screening and random drug and alcohol testing
- Home visits, both scheduled and unscheduled
- Required medication

CONREP can place restrictions on:

- Where you can live
- Roommates
- Travel
- Your ability to have weapons
- Driving
- Who you can spend time with
- Curfews

Before you are placed on CONREP, you will be given a contract with the conditions you will be subject to while in the program. If you do not sign this contract, you will not be admitted into the program. CONREP Manual § 1410.25. These terms and conditions can be changed while you are in CONREP, but you must be given the changes in writing and sign the new contract. CONREP Manual § 1410.32.

10. **Can I challenge my conditions?**

Nothing in the law says you can challenge your conditions. However, you may be able to challenge them using principals of past parole cases. Some parolees have successfully challenged conditions of parole by saying that the conditions were overbroad. Here are four court cases that talk about this:

- *People v Garcia*, 19 Cal. App. 4th 97 (1993)
- *People v. Patel*, 196 Cal. App. 4th 956 (2011)

- *People v. Moore*, 211 Cal. App. 4th 1179 (2012)
- *People v. Bauer*, 211 Cal. App. 3rd 937 (1989)

However, many courts find that parolees and forensically committed persons should be treated differently. See, e.g., *People v. Mord* (1988) 197 Cal.App.3d 1090, 1105 (noting that “there is ample justification for legislative distinctions between those committed for treatment and those committed for punishment”). See also *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 167 (finding that IST commitments are non-punitive); *People v. Crosswhite* (2002) 101 Cal.App.4th 494, 506-07 (finding that NGI commitments are non-punitive and that insanity acquittees are not similarly situated to parolees); *People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 840-41 (finding that MDO statutes are non-punitive).

11. **What is the process for review of my outpatient status?**

While you are on CONREP, the community program director has to send a report about your progress to the court every 90 days. Penal Code § 1605(d). After you have been in CONREP for a year, the court must hold a hearing. Penal Code § 1606.

In the report that CONREP sends to the court near the end of your one year, they will recommend one of the following:

1. To continue you in the CONREP program
2. To have you sent back to the hospital
3. To release you from CONREP

Penal Code § 1606.

At the end of the hearing, the court must decide on one the above.

If you were sent to the hospital as NGI, you can petition the court for restoration of sanity and unconditional release after being in CONREP for one year. Penal Code § 1026.2. You may do this through a restoration of sanity petition or a writ of habeas corpus. It is also possible for the court to hold this hearing before a full year if the CONREP director recommends you for restoration of sanity and unconditional release.

12. **Does time in CONREP count toward my maximum term of commitment?**

If you were committed to a state hospital as **NGI, SVP, or MDO**, no. The time spent in the CONREP program does not count towards fulfilling your maximum commitment (“top date”). Penal Code § 1600.5.

If you were committed to a state hospital as **IST**, your time in CONREP will count toward your sentence if you go to court and are found guilty. Penal Code § 1375.5(b).

For example: Joe was found NGI of a felony and sent to Napa State Hospital. His maximum term, or “top date,” is 10 years. After five years, he is accepted into CONREP. He was in CONREP for four years when he tested positive for cocaine. CONREP revoked him and sent him back to the hospital. He only served five years at Napa, so he still has five years until his ‘top date,’ even though he was in CONREP for four years.

13. Can I transfer to a different CONREP program?

If you are accepted into CONREP, the court usually orders you to be placed in the county where you were arrested. You may be transferred to another county’s CONREP program “when clinically indicated.” CONREP Manual § 1430.18. This means that some reasons may allow you to transfer. These reasons may be:

- Your family or support systems are in another county
- You need to be in a different county than your victim
- Your safety and welfare would be threatened in your county
- You need to be in a different county than people you used to engage in criminal activity with

SVP’s must be placed in their home county before they can be conditionally released, unless there are extraordinary circumstances. Welfare and Institutions Code § 6608.5.

If you are MDO, your parole agent and the new parole agent must also be involved in approving a transfer to a different program.

Lastly, the new county’s CONREP program must accept you for you to be able to transfer there.

14. How do I file a grievance against CONREP?

While in CONREP, you have the right to file a grievance. You can file a grievance about actions taken by your program, or an employee of the organization, that you feel affects your welfare or status. CONREP Manual § 1470.9.

CONREP must post information about the grievance process in a language that you understand, and must make the grievance form available to you. CONREP Manual § 1470.9.

There are four levels of review for your grievance:

Level I Review

Your Patient Grievance form is submitted to the CONREP Director or designee. They must respond to you on the written form within 15 working days from when they received it. A complaint to a different agency, such as a county mental health program, may take the place of the Level I review.

Level II Review

If your grievance is not addressed at Level I review, the next step is to submit your grievance to the CONREP Operations Manager. The CONREP Community Program Director must tell you, in writing, how to reach the Operations Manager. The Operations Manager looks at your grievance and the Level I decision, and must respond to you, in writing, within 15 working days of getting your grievance.

Level III Review

If your grievance is denied at Level II, you may appeal to the Chief of Forensic Services. You must be given, in writing, the contact information for the Chief of Forensic Services. The Chief reviews your grievance and the Level I and Level II decisions, and must respond to you in writing within 15 days of getting your grievance.

Level IV Review

If the grievance cannot be satisfactorily resolved to the patient's satisfaction, it may be appealed to the Director of the State Department of State Hospitals or their designee.

CONREP Manual § 1470.10-12.

15. How do I get off CONREP?

There are three ways in which your commitment in the CONREP program can end:

1. At the review hearing, the court does not renew your commitment to the CONREP program and either discharges you from commitment or orders you to return to a treatment facility;
2. When the CONREP director tells the court that you no longer meet the criteria for CONREP, and the court calendars the case for further proceedings; or
3. When your outpatient status is revoked and you are sent back to the state hospital.

Penal Code § 1606-1608.

16. Can CONREP send me back to the state hospital?

The CONREP director can ask the court to put you back in the hospital. Penal Code § 1608. If possible, you should be notified and given an opportunity to talk about this before a recommendation to return you to the hospital and is sent to the court. CONREP Manual § 1430.5. Here are some of reasons a person's outpatient status can be revoked:

- CONREP thinks you need extended inpatient treatment;
- You refuse to accept more outpatient treatment;
- The county prosecutor believes you are a danger to the health and safety of the community and asks the court to put you back in the hospital;
- You commit a crime;
- You use an illegal substance;
- Your psychiatric condition gets worse;
- You leave your county without permission;
- You do not comply with your treatment contract.

See CONREP Manual § 1430.5.

17. What is the procedure for a revocation hearing?

If you are a **SVP, IST, or NCI** commitment, a hearing must be held within **15 court days** of the court receiving the request to put you back in a hospital. Penal Code § 1608. At the hearing, CONREP must prove the need for you to be put back in the hospital by a **preponderance of the evidence**. *People v. DeGuzman*, 33 Cal.App.4th 414 (Ct. App. 1995). This means that the court must believe that their reasons have at least a 51% chance of being true.

At the hearing, you have the right to:

- A written notice of the charges;
- The opportunity to confront and cross examine witnesses; and
- A fact-finding hearing by a neutral body.

Penal Code § 1237; *People v. Henderson* (1986) 187 Cal.App.3d 1263.

If you lose at the hearing, you have the right to appeal the decision. The trial court's decision can be reversed if it "exceeds the bounds of reason, all of the circumstances being considered." *People v. Cross*, 127 Cal. App. 4th 63, 73 (Ct.

App. 2005). This means that the decision to deny you CONREP can be reversed if there is no way that it can be understood.

If you are in CONREP as an **MDO**, the procedure is a little different. You have the right to a revocation hearing conducted by the Department of State Hospitals within **15 days** of being taken back to the hospital, or within **21 days** if there is a good reason it cannot happen within 15 days. Penal Code § 2964(a).

18. **What happens if my outpatient status is revoked?**

You are returned to a state hospital or any mental health treatment center approved by the CONREP program director. You can't go back into CONREP without the court's approval.

19. **Can I be put in the hospital or jail without a court hearing?**

If the CONREP program director believes that you are dangerous, you can be sent to a mental health facility before your revocation hearing. This is known as **TANGI status** (Temporary Admission NGI). You must be confined at a facility near the courthouse that will provide treatment, security and the least amount of interruption of your treatment program. Penal Code § 1610.

You can be put in jail only if the jail will provide treatment, security, little interruption of your treatment program, and ensure the safety of both you and the general population of the jail. If you are put in jail, the law says you must be kept separate from the jail population. Penal Code § 1610(b).

If the court decides you are not being given the right treatment in the jail, or that being in jail is inappropriate, they can place you in a more appropriate facility, such as a state hospital. Penal Code § 1610(b).

While on TANGI status, you have a right to challenge your confinement by submitting a writ of habeas corpus. Penal Code § 1610(c).