



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Southern California

February 12, 2021

To: County of Los Angeles Sheriff Civilian Oversight Commission
Lael Rubin, Chair
Casimiro U. Tolentino, Vice-Chair
Robert C. Bonner
Patti Giggans
James P. Harris
Sean Kennedy
Priscilla Ocen
Xavier Thompson

Sent via email

Re: State Funding Available to Lower Jail Population of People Charged With Felonies Found Incompetent to Stand Trial

Dear Commissioners:

The ACLU of Southern California (ACLU So Cal) and Justice LA (JLA) is writing to inform the Commission of two sources of substantial state funding that would enable the Office of Diversion and Reentry (ODR) to move a substantial number of people charged with felonies who have been found incompetent to stand trial (FISTs) out of the jails into community-based placements to receive competency restoration treatment, and to seek the Commission's support. We hope the Commission will issue a recommendation to the County to accept both funding streams because the monies will allow more humane and effective treatment and help end the lengthy and unconstitutional jail stays ISTs in Los Angeles endure before being admitted to state hospital County and receiving treatment. The reduction in jail population meshes perfectly with Measure R's goal to reduce Los Angeles County's jail population and invest in prevention and mental health treatment.

For many years the ACLU So Cal and JLA have advocated for the rights of people with mental illness caught up in the criminal legal system in Los Angeles and throughout Southern California. Our work has included advocacy against the development of a so-called mental health jail, in favor of the Office of Diversion and Reentry, and the ATI initiative. The ACLU So Cal has also co-counseled with the ACLU of Northern California a lawsuit against the Department of State Hospitals (DSH)¹ for its unconscionable delays moving people found

¹ The suit also names the California Department of Developmental Services, which is responsible for the relatively small number of people who are declared incompetent to stand trial because of developmental disabilities.

Incompetent to Stand Trial (ISTs) from county jails into state hospitals. *Stiavetti v. Ahlin*, R651779731 (Alameda Superior Court).²

\$19.4 Million in Available State Funds to Expand ODR's Community Based Restoration Program for FISTs

Since 2015, ODR has provided community-based restoration services to 1,791 people charged with misdemeanors found incompetent to stand trial (MISTs) and is currently providing CBR services to 302 MISTs under active order. In 2018, because of its MIST CBR program, ODR expanded its CBR services to FISTs *using almost exclusively state funding*. ODR currently has 243 FISTs in CBR who would otherwise be languishing in the jail. Since 2018, ODR has provided CBR to 442 FISTs with a retention rate of 80%, i.e., they have not ended up in back in jail, or gone to prison. The result of the program has been to lower the jail population of some of the very sickest individuals in the criminal legal system.

The Department of State Hospitals has agreed to provide the County with \$19.4 million in additional funds for the end of FY 2020-21 and FY 2021-22 to enable ODR to provide CBR services to at least 200 more FISTs, but they County has not yet agreed to accept the funds. Accepting this funding would enable the County to lower its jail population by moving some of the people with the most serious mental illness out of the jail and into more humane community placements.

Stiavetti and The Community Care Demonstration Project for Felony ISTs (CCDP-IST)

The ACLU of Southern California and the ACLU of Northern California filed the *Stiavetti* lawsuit only after the State's multi-year failure to ensure the people who were declared incompetent to stand trial were moved to state hospitals for competency restoration without inordinate delays. During a six-month period in 2017 it took DSH an average of 86 days to admit IST defendant to one of its hospitals after the court issued a commitment order, during which ISTs generally languished in county jails. Moreover, some patients waited *more than 200 days* from their date of commitment to be admitted. The numbers have only gotten worse since COVID, and delays now range from 6 months to more than a year.

Over the course of the lawsuit the ACLU has encouraged the State to pursue ways to increase community-based restoration. The ACLU and JLA believe that community-based treatment is more humane and effective than treatment in state mental hospitals, and it provides an alternative to end the lengthy and unconstitutional jail stays prior to IST's being admitted to state hospitals. In contrast to the State's woeful performance, we have been impressed by the success of ODR's efforts to provide for community-based restoration for both people found incompetent to stand trial charged with misdemeanors (MIST's) and those charged with felonies (FISTs) in Los Angeles. We understand that on average it has taken ODR 2-4 weeks to move MISTs and FISTs into community treatment after the Court issues its commitment order. ODR has performed far better than the State in moving ISTs into treatment, and the speed with which it gets people into treatment satisfies the timelines the Superior Court ordered the State to meet within 36 months of its final order.³

² The State has appealed the trial court's ruling that the State was violating the due process rights of ISTs because of the lengthy delays between the time a person was found incompetent to stand trial and their admission to a state hospital. The appeal is pending.

³ The order has been stayed pending appeal.

Given the State's long history of unconstitutional delays and ODR's success in getting MISTs and FISTs out of jail and into community-based competency restoration far more quickly than they are transferred to state hospitals, we were pleased to see that the Governor's proposed 2021-22 budget includes The Community Care Demonstration Project for Felony IST (CCDP-IST), a pilot program with approximately \$468 million to allow three counties to take responsibility for FISTs for three years. The vast majority of the funds would go to Los Angeles County if it participates in program because it has by far the largest FIST population of any county in the state.

Los Angeles County should participate in the program but has so far not agreed to do so. If the County were to participate in the pilot under the auspices of ODR, CBR would be the form of treatment for the vast majority of FISTs. For FISTs for whom community-based treatment is not feasible, we are confident that ODR can begin intensive programming in the jails far faster than it would take for people to be transferred to state hospitals. Indeed, since 2013 ODR has provided intensive services to some FISTs in the jails, and 323 have been found competent while in jail, obviating the need for longer jail stays while awaiting transfer to state hospital. While we believe that jails are not good places for people with mental illness because they are locked restrictive environments, state mental hospitals are far from ideal because they are also locked, restrictive environments. And, FISTs who begin receiving intensive competency restoration services in the County jails soon after the Court issues its commitment order would be far better off than if they were languishing in jail month after month waiting to be transferred to a state mental hospital.

The ACLU filed *Stiavetti* only after a multi-year history of unacceptable delays by the State. We did not sue any counties, nor do we foresee adding any counties as defendants in the suit. We are confident that if Los Angeles were to participate in the state-funded pilot program it would provide better care for FISTs in Los Angeles without the excessive delays that have plagued the state's treatment of ISTs for years, which are the precise goals of *Stiavetti* itself.

Conclusion

The ACLU and JLA respectfully request that the Commission place on its agenda consideration of the two sources of state funding, hear testimony from ODR on its CBR work and the adequacy of the state funding to expand that work as well as public comment from members of the community, and after consideration of the program recommend to the County that 1) it accept the \$19.4 million to expand ODR's CBR work with FISTs and 2) participate in the Community Care Demonstration Project for Felony ISTs.

Sincerely,



Peter J. Eliasberg
ACLU Foundation of Southern California

Eunisses Hernandez
Justice LA

Cc: Brian Williams, Executive Director, Sheriff's Civilian Oversight Commission