

January 28, 2021

Via E-Mail

Honorable Members of the Board of Supervisors
Kenneth Hahn Hall of Administration
500 W Temple Street
Los Angeles, CA 90012

RE: Pilot Program for People Charged with Felonies Found Incompetent to Stand Trial (FISTs)

Dear Honorable Members of the Board of Supervisors:

We encourage the County of Los Angeles to apply to participate in the Governor's proposed pilot program to fund counties to provide treatment for people charged with felonies who are deemed Incompetent to Stand Trial (FISTs). For many years the ACLU of Southern California has 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. We have also co-counseled with the ACLU of Northern California a lawsuit against the Department of State Hospitals (DSH)¹ for its unconscionable delays moving ISTs from county jails into state hospitals. *Stiavetti v. Ahlin*, R651779731 (Alameda Superior Court).² The County should participate in the pilot program because it will provide more humane and effective treatment, help end the lengthy and unconstitutional jail stays ISTs in Los Angeles endure before being admitted to a state hospital and receiving treatment, and reduce the jail population thereby facilitating the closure of Men's Central Jail.

Stiavetti and The Community Care Demonstration Project for Felony IST (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

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.

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.

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admit ISTs 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 we have encouraged the State to pursue ways to increase community-based restoration. We 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

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 substantial funding to allow three counties to take responsibility for FISTs. We encourage Los Angeles County to apply to participate in the program and place ODR at the helm. If the County were to participate in the pilot it should allow ODR to take the lead on the program ensuring that community-based treatment is 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. 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.

In addition, participation in the program should help reduce the number of people with serious mental illness in the jail. This reduction will facilitate the County's initiative to close MCJ and otherwise reduce its jail population.

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³ The order has been stayed pending appeal.

We 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 IST's for years, which are the precise goals of *Stiavetti* itself.

Sincerely,



Peter J. Eliasberg
Chief Counsel
ACLU Foundation of Southern California



Michael Risher
Of Counsel
ACLU Foundation of Northern California

cc: Dr. Christina Ghaly
Judge (ret.) Peter Espinoza
Justice Deputies
Mental Health Deputies