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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN FRANCISCO**

14 AMERICAN CIVIL LIBERTIES UNION OF  
15 NORTHERN CALIFORNIA, a non-profit  
corporation,

16 Petitioner,

17 vs.

18 CALIFORNIA DEPARTMENT OF STATE  
HOSPITALS,

19 Respondent.

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF FOR VIOLATIONS OF THE  
CALIFORNIA PUBLIC RECORDS ACT  
AND CALIFORNIA CONSTITUTION,  
ART. I, SEC. 3(B), WITH EXHIBIT A**

[Gov. Code, §§ 7920.000 et seq.; Cal. Const.,  
art. I, § 3; Code Civ. Proc., §§ 1060 and 1085]

1 **INTRODUCTION**

2 1. Under the California Constitution, the people have a “right of access to information  
3 concerning the conduct of the people’s business.” (Cal. Const., art. 1, § 3, subd. (b), par. (1).)  
4 The California Public Records Act (“CPRA”) provides a comprehensive framework for the  
5 disclosure of government records based on the premise that access to such information is “a  
6 fundamental and necessary right of every person in this state.” (Gov. Code, § 7921.000.) This  
7 lawsuit seeks to enforce the CPRA.

8 2. Respondent CALIFORNIA DEPARTMENT OF STATE HOSPITALS (“DSH”)  
9 has primary responsibility for evaluating and treating individuals charged with certain offenses  
10 who are deemed incompetent to stand trial (“IST”) due to a mental illness. DSH has been found  
11 to have systematically violated its constitutional obligations to protect the rights of these  
12 individuals. This lawsuit concerns the public’s right to access information essential to oversight  
13 of DSH’s fulfillment of its responsibility.

14 3. If an individual charged with certain offenses is deemed IST, the trial court must  
15 suspend criminal proceedings and order that the individual receive treatment to restore their  
16 competency so that criminal proceedings against them may continue. DSH is statutorily required  
17 to provide treatment to restore defendants’ competency in many circumstances. (Pen. Code §  
18 1370 et seq.) Thus, the court may issue an order committing the individual to DSH custody.  
19 Instead of receiving prompt treatment upon a court’s issuance of a commitment order, however,  
20 many individuals have remained in jail for extended periods of time on a statewide waitlist for  
21 treatment at a DSH facility (the “IST waitlist”), usually with inadequate treatment for their  
22 serious mental illness and in conditions that worsen their mental health and place them in danger.

23 4. Petitioner AMERICAN CIVIL LIBERTIES UNION OF NORTHERN  
24 CALIFORNIA (“ACLU”) submitted a CPRA request to Respondent DSH on September 14,  
25 2023 seeking records related to DSH’s IST waitlist and provision of competency restoration  
26 services to IST patients (the “CPRA Request”). In particular, the ACLU’s CPRA Request seeks  
27 information regarding people who died after being deemed IST but without access to treatment;  
28 data to explain the services or treatment received by individuals deemed IST, and the length and

1 reasons for delays in access to treatment; information about a new jail-based program established  
2 by DSH in partnership with the private contractor, Wellpath, to provide programming to  
3 individuals deemed IST and remaining in county jail; and court orders—for commitment to a  
4 DSH facility or for sanctions related to commitment delays.

5           5.       In the seven months since ACLU submitted the CPRA Request, DSH has produced  
6 only: 1) the number of people who have been “removed from the IST waitlist due to death”—  
7 “approximately thirty-five (35) individual[s]” from January 2018 to September 14, 2023; 2) three  
8 Status Reports publicly filed in *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691 (hereafter  
9 *Stiavetti*); and 3) 126 heavily-redacted court orders. DSH refused to produce any information  
10 about deaths of individuals on the IST waitlist aside from a single bare summary statistic. DSH  
11 also refused to produce any of the individualized data requested, producing only aggregate data  
12 publicly filed in a case in which ACLU is both plaintiff and counsel. In the court orders  
13 produced, DSH redacted, among other things, the names of the judges and issuing counties, as  
14 well as all relevant dates.

15           6.       DSH’s response to the CPRA Request violates the CPRA. DSH has refused to  
16 conduct an adequate search and produce responsive data in its possession. It has attempted to  
17 justify withholding responsive information by citing inapplicable exemptions, asserting  
18 overbroad and unsupported requirements for de-identification, making extensive and unnecessary  
19 redactions, and asserting that it was incapable of producing the requested information. DSH  
20 acknowledged that at least 35 people died in custody while on the IST waitlist but refused to  
21 disclose any other information than that number, citing the privacy rights of the deceased  
22 individuals. It has heavily redacted court orders, which are otherwise publicly available. DSH  
23 also refused to produce any underlying data, despite being able to produce aggregate data where  
24 court-ordered to do so. By acting in this manner, DSH has impermissibly insulated itself from  
25 public scrutiny and accountability, thereby thwarting the objectives of the California Constitution  
26 and the CPRA.

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1 **PARTIES**

2 7. Petitioner ACLU is a San Francisco-based non-profit organization under the laws  
3 of the state of California and is an affiliate of the national American Civil Liberties Union, a non-  
4 profit, non-partisan civil liberties organization with more than 1.7 million members dedicated to  
5 the principles of liberty and equality embodied in our civil rights laws and both the United States  
6 and California Constitutions. ACLU relies on the CPRA to gather information and ensure that the  
7 public is informed about the conduct and practices of government officials. ACLU is a member  
8 of the public with the right under the CPRA to inspect public records and to seek relief in a court  
9 to enforce that right. ACLU is also both counsel and plaintiff in *Stiavetti, supra*, 65 Cal.App.5th  
10 691, in which the Court of Appeal held that DSH “systematically violated the due process rights  
11 of all IST defendants in California” by failing to promptly provide substantive competency  
12 restoration services.

13 8. Respondent CALIFORNIA DEPARTMENT OF STATE HOSPITALS is a state  
14 agency within the meaning of Government Code section 7920.540. DSH has the primary  
15 responsibility for evaluating and treating individuals charged with offenses who have been found  
16 IST due to a mental illness. DSH’s projected budget for fiscal year 2024-2025 totals \$3.4 billion.

17 **JURISDICTION AND VENUE**

18 9. This Court has jurisdiction under Government Code sections 7923.000, 7923.100  
19 through 7923.115, and 7923.500; Code of Civil Procedure sections 1060 and 1085; and Article  
20 VI, section 10 of the California Constitution.

21 10. Venue is proper in this Court. Because DSH is a state agency and the California  
22 Attorney General has an office located in the City and County of San Francisco, any suit against  
23 DSH that may be brought in County of Sacramento may also be commenced and tried in this  
24 Court. (Code Civ. Proc., § 401, subd. (1); Gov. Code, §§ 7923.100 and 7923.105.)  
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1 isolation, and is not provided adequate mental health treatment, the worse his or her condition,  
2 disability and prognosis, and therefore the less likely there will be a restoration of competence  
3 (or, in a certain proportion of cases, the longer it will take for competence to be restored).”  
4 (*Stiavetti, supra*, 65 Cal.App.5th at p. 702; see also *id.* at p. 725 [recognizing the “undisputed  
5 harms these defendants suffer due to prolonged incarceration in county jails while awaiting  
6 transfer and treatment, which often delay their return to competence”].)

7 15. Among the most severe harms suffered by individuals deemed IST: individuals  
8 committed via court order to DSH have died while in jail awaiting treatment. In response to the  
9 CPRA Request at issue in this writ, DSH has confirmed that at least 35 people have died while on  
10 the IST waitlist in the five-year period between January 2018 and the date of the CPRA Request.  
11 Yet DSH refuses to produce *any* information besides this bare statistic. It asserts that, on the one  
12 hand, it does not keep track of this information; and on the other, that even the information it has  
13 it will not disclose to protect the privacy rights of the deceased.

14 16. ACLU has been able to identify some but not all of these individuals from publicly  
15 available records. Among the individuals who died in custody while on the IST waitlist over the  
16 past five years:

- 17 a. **Stanley Wilson Jr.**, a graduate of Stanford University and a former NFL football  
18 player, struggled with mental health problems, addiction, and the aftermath of  
19 childhood sexual abuse up until the time of his death in custody. On August 24,  
20 2022, Mr. Wilson was arrested in Los Angeles County after breaking into a  
21 mansion and bathing in an outdoor fountain. Following his arrest, Mr. Wilson was  
22 found IST. On November 7, 2022, the Los Angeles County Superior Court  
23 committed Mr. Wilson to DSH and ordered him to be transported for treatment no  
24 later than December 5, 2022. Despite that order, Mr. Wilson remained incarcerated  
25 in Los Angeles County Jail until February 1, 2023. On that date, he was removed  
26 from his cell to be taken to DSH’s Metropolitan State Hospital. But Mr. Wilson  
27 died prior to his admission to the hospital at a location that is still uncertain. A  
28 coroner ruled his death to have resulted from a pulmonary embolism, which can be

1 caused by prolonged use of restraints. However, the circumstances of his death and  
2 his final days in custody remain unclear due, in part, to the County of Los Angeles'  
3 claim that their video surveillance cameras were not working at the time of Mr.  
4 Wilson's death. Both DSH and the Los Angeles County Sheriff's Department deny  
5 that he was in their custody at the time of his death. Mr. Wilson leaves behind his  
6 grieving mother, father, and sister.<sup>1</sup>

7 b. **Vinetta Martin** was a 32-year-old mother of a young son who resided in San  
8 Leandro, California at the time of her death in custody. She was arrested on July 5,  
9 2020 in Alameda County and charged with assault. Shortly after her arrest, the  
10 court declared doubt as to her competency. On September 11, 2020, Ms. Martin  
11 was found IST, and the court ordered her committed to DSH on October 2, 2020.  
12 During her extended time in county jail, awaiting transfer, Ms. Martin became  
13 suicidal. After she informed jail staff that she wanted to kill herself, Alameda  
14 County Sheriff's deputies were required to observe her every 30 minutes but failed  
15 to do so. On April 3, 2021, more than six months after being ordered by a court to  
16 be transferred to a state hospital, Ms. Martin was found unconscious in her cell  
17 with a bedsheet wrapped around her neck. She died later that day. The deputies on  
18 duty at the time of Ms. Martin's suicide were later charged with falsifying records  
19 after they attempted to conceal their failure to conduct the required visual checks to  
20 ensure her well-being.<sup>2</sup>

21 c. **Kristina Chermak** was arrested in Santa Barbara County on March 5, 2022 and  
22 charged with nonviolent offenses. Ms. Chermak had a long history of arrests,  
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25 <sup>1</sup> See Steve Henson, *Ex-NFL Player Stanley Wilson Jr Died in Custody. Why Is It a Mystery?*,  
26 (Feb. 6, 2024) L.A. Times <<https://www.latimes.com/sports/story/2024-02-06/stanley-wilson-jr-death-lawsuit-los-angeles-county-sheriffs-jail-hospital-mental-illness>> (as of April 11, 2024).

27 <sup>2</sup> See Larry Altman, *Deputies Charged with Falsifying Jail Oversight Records*, (May 31, 2023)  
28 Independent News <[https://www.independentnews.com/news/regional\\_and\\_ca/deputies-charged-with-falsifying-jail-oversight-records/article\\_9e19948c-ffce-11ed-b706-dba80da783df.html](https://www.independentnews.com/news/regional_and_ca/deputies-charged-with-falsifying-jail-oversight-records/article_9e19948c-ffce-11ed-b706-dba80da783df.html)> (as of April 11, 2024).

1 periods of incarceration, and a known history of serious mental illness and suicide  
2 attempts. On or around May 3, 2022, Ms. Chermak was committed to DSH after  
3 being determined to be IST. She faced a months-long wait in jail for a bed at a state  
4 hospital. During her time on the waitlist, Ms. Chermak was repeatedly disciplined  
5 and was primarily kept in isolation due to her mental illness. According to a Grand  
6 Jury report, she was denied access to all jail programs. Instead, jail staff provided  
7 her with coloring books to occupy her. On September 9, 2022, before receiving any  
8 competency treatment, Ms. Chermak was found dead in her jail cell. Officials  
9 concluded that she died due to a fentanyl overdose. She was 35 years old.<sup>3</sup>

10 d. **Rene Snider** was a 39-year-old Merced mother of two daughters at the time of her  
11 death. Ms. Snider struggled with long-standing mental illness, which worsened  
12 over time. She lost custody of her daughters due to issues related to her mental  
13 illness and suffered from paranoid delusions about her children being abused in her  
14 absence. In 2016, she was arrested and charged with kidnapping her daughters after  
15 taking them from their father’s residence. Following her arrest, Ms. Snider posted  
16 bond and successfully complied with her conditions of release for two years,  
17 continuing her psychiatric care and not committing any criminal offenses. In  
18 November 2018, the Merced County Superior Court determined Ms. Snider to be  
19 IST. On March 18, 2019, the Superior Court remanded Ms. Snider into custody on  
20 the recommendation of the Central Valley Conditional Release Program, which  
21 recommended that Ms. Snider be placed in a locked, in-patient DSH facility for  
22 competency restoration treatment. Upon her arrival at the Merced County Jail the  
23 same day, Ms. Snider informed jail staff of her psychiatric conditions, the  
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25 <sup>3</sup> See Santa Barbara County Grand Jury, *A Vicious Cycle – Incarceration of the Severely Mentally*  
26 *Ill*, 2022-2023 Report, pp. 2-5 <[https://sbcgj.org/wp-content/uploads/2023/07/A-Vicious-Cycle-](https://sbcgj.org/wp-content/uploads/2023/07/A-Vicious-Cycle-Incarceration-of-the-Severely-Mentally-Ill.pdf)  
27 [Incarceration-of-the-Severely-Mentally-Ill.pdf](https://sbcgj.org/wp-content/uploads/2023/07/A-Vicious-Cycle-Incarceration-of-the-Severely-Mentally-Ill.pdf)> (as of April 11, 2024); See Jack Magargee, *Santa*  
28 *Barbara Grand Jury Probes Myriad Problems Around County*, (Aug. 18, 2023) Santa Barbara  
Independent <[https://www.independent.com/2023/08/18/santa-barbara-grand-jury-probes-myriad-](https://www.independent.com/2023/08/18/santa-barbara-grand-jury-probes-myriad-problems-around-county/)  
[problems-around-county/](https://www.independent.com/2023/08/18/santa-barbara-grand-jury-probes-myriad-problems-around-county/)> (as of April 11, 2024).



1 medications prescribed to her, and her history of suicide attempts. Ms. Snider's  
2 prescriptions were not restarted in custody and she was not housed in a safety cell  
3 or formally identified as at risk for suicide. On March 23, 2019, Ms. Snider died in  
4 jail by hanging herself with a bedsheet tied to the rails of a bunk bed. The autopsy  
5 report revealed that she had previously attempted to commit suicide in the days  
6 since she had been remanded into custody. Among the personal effects found in  
7 Ms. Snider's jail cell was a handwritten "last will and testament," which read, in  
8 part, "in case I don't survive, I love my children very much."<sup>4</sup>

9 e. **Markese Braxton** was born on February 4, 1992, and 26 years old at the time of  
10 his death in custody at the Los Angeles County Jail, while awaiting transfer to a  
11 DSH facility for treatment. Mr. Braxton had been arrested on September 19, 2016.  
12 He was transferred to a DSH facility for competency restoration, where he spent  
13 approximately a week before the doctor released him back to jail. Mr. Braxton was  
14 then re-committed to DSH on March 21, 2018 but died in jail on June 6, 2018,  
15 before any further transfer to a DSH facility. His autopsy report reportedly showed  
16 soft tissue damage on his hands, back, shoulders and shins, along with documented  
17 blood between the brain and the skull, yet his death was ruled as due to an  
18 unknown cause.<sup>5</sup>

19 17. Very little information is publicly available about some individuals who died while  
20 on the IST waitlist. This limits oversight and accountability, as well as public awareness about the  
21 extent of the IST crisis and its tragic human impact. Among those who died in relative obscurity:

22 a. **Astrid Johnson**, of El Monte, was arrested in August 2022 on a probation  
23 violation. In the prior criminal case which established the terms of her probation,  
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25 <sup>4</sup> See Complaint, ECF No. 1, *DM, et al v. County of Merced*, Case No. 1:20-cv-00409-NONE-  
26 SAB (E.D. Cal. Mar. 19, 2020).

27 <sup>5</sup> See Complaint, ECF No. 1, *Braxton v. Los Angeles County*, Case No. 5:20-cv-01128 (C.D. Cal.  
28 June 2, 2020); See Taylor Walker, *Deadly LA Jails and Inconclusive Autopsies*, (Mar. 5, 2023)  
WitnessLA <<https://witnessla.com/deadly-la-jails-and-inconclusive-autopsies/>> (as of April 11,  
2024).

1 Ms. Johnson had been deemed IST. Ms. Johnson was diagnosed with schizophrenia  
2 and was known to police as being at risk due to her condition. On May 25, 2023,  
3 after the arrest for a probation violation, Ms. Johnson was again committed to DSH  
4 to receive restoration services after being found IST. However, Ms. Johnson, who  
5 reportedly suffered from an ongoing illness, did not survive the wait in jail. She  
6 died in custody on July 5, 2023, six weeks after her commitment to DSH, at the age  
7 of 61. At her last court date, on June 27, 2023, she was reportedly 556th on the  
8 waiting list to be admitted for treatment.<sup>6</sup>

9 b. **Stormy Castro** was born on June 5, 1998, and twenty years old at the time of her  
10 death in custody. She was arrested and charged with burglary on July 4, 2018, in  
11 Fresno. On August 3, 2018, Ms. Castro was deemed IST and, on August 28, 2018,  
12 the court committed her to DSH for competency restoration. On October 24, 2018,  
13 nearly two months after her DSH commitment, Ms. Castro died in jail, before ever  
14 receiving competency treatment.<sup>7</sup>

15 c. **Michael Alan Sugar** was born on February 4, 1957. He was committed to DSH for  
16 restoration services on March 21, 2018. While awaiting transport to DSH, nearly  
17 two months after his DSH commitment, Mr. Sugar was beaten to death by his  
18 cellmate. He died in custody on May 25, 2018 at the age of 61.<sup>8</sup>

19 18. As of February 29, 2024, there are 406 individuals on the IST waitlist.

### 20 3. Expanded Jail IST Programming

21  
22 <sup>6</sup> See Christopher Damien, *Coachella Valley Woman Dies of Illness After Months in Riverside*  
23 *County Jail, Sheriff Says* (July 7, 2023) Desert Sun  
24 <<https://www.desertsun.com/story/news/local/2023/07/07/coachella-valley-woman-dies-of-illness-after-months-in-county-jail/70392179007/>> (as of April 11, 2024).

25 <sup>7</sup> Michael Alan Sugar and Stormy Sea Castro appear as “people [who] appear to have died after  
26 the date of their commitment order and before receiving competency treatment” in State  
27 Defendants’ Amended Responses to Plaintiffs’ Interrogatories, Set One, in *Atayde v. Napa State*  
28 *Hospital*, Case No. 1:16-CV-00398-DAD-SAB (E.D. Cal. Aug. 28, 2019).

<sup>8</sup> Debbie L. Sklar, *Inmate Fatally Injured in San Diego Central Jail Fight Identified*, (May 29,  
2018) Times of San Diego <<https://timesofsandiego.com/crime/2018/05/29/inmate-fatally-injured-in-san-diego-central-jail-fight-identified/>> (as of April 11, 2024).

1           19.     The backlog of people on the IST waitlist and the threat of judicial sanction against  
2 DSH for noncompliance with its constitutional obligations has resulted in the increase of jail-  
3 based programming for individuals deemed IST. In particular, DSH partnered with the private jail  
4 medical provider, Wellpath, to establish an Early Access and Stabilization Services (EASS)  
5 program to provide some jail-based services more promptly to individuals deemed IST. DSH has  
6 also established expedited processes to re-evaluate people for competency remotely, while they  
7 remain on the waitlist and even before accessing any treatment.<sup>9</sup>

8           20.     Experts have repeatedly expressed concerns about the quality and associated risks  
9 of jail-based treatment.<sup>10</sup> The California Legislature has also acknowledged that jail is not the  
10 appropriate site for treatment.<sup>11</sup> Nonetheless, over the past two years, DSH has established EASS  
11 programming in at least 44 California counties,<sup>12</sup> almost all in partnership with Wellpath. The  
12 number of individuals enrolled in EASS increased from zero in 2021 to more than 2,300 over the  
13 past year.

14           21.     Alongside this dramatic expansion of jail-based programming for people with  
15 severe mental illness, DSH has provided only cursory information about what happens to those  
16 enrolled in EASS. In the public Status Reports DSH files pursuant to the court order in *Stiavetti*,

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18 <sup>9</sup> See, e.g., Welf. & Inst. Code, §§ 4335.2, subs. (b), (c); Dep’t of State Hospitals, *2021 Budget*  
19 *Act Highlights*, pp. 9-10, <[https://www.dsh.ca.gov/About\\_Us/docs/DSH\\_2021-](https://www.dsh.ca.gov/About_Us/docs/DSH_2021-22_Budget_Act_Highlights.pdf)  
20 [22\\_Budget\\_Act\\_Highlights.pdf](https://www.dsh.ca.gov/About_Us/docs/DSH_2021-22_Budget_Act_Highlights.pdf)> (as of April 11, 2024).

21 <sup>10</sup> See, e.g., Craig Haney, “Madness” and Penal Confinement: Some Observations on Mental  
22 *Illness and Prison Pain*, Punishment & Society, (Vol. 19(3) 2017) p. 311 [prisons “are the very  
23 antithesis of a treatment-oriented milieu that promotes openness, caring, and mutual concern.”];  
24 Terry Kupers, *Mental Health Jails: A Foolhardy Solution for a Huge Problem*, (Dec. 9, 2017)  
25 Psychology Today, <[https://www.psychologytoday.com/us/blog/prisons-and-](https://www.psychologytoday.com/us/blog/prisons-and-prisms/201712/mental-health-jails)  
26 [prisms/201712/mental-health-jails](https://www.psychologytoday.com/us/blog/prisons-and-prisms/201712/mental-health-jails)> (as of April 11, 2024) [“the culture of punishment that  
27 prevails in jails is not an appropriate setting for mental health treatment”].

28 <sup>11</sup> Assem. Bill No. 720 (2017-2018 Reg. Sess.), § 1, subs. (c), (d) [“Jails are not therapeutic  
environments and were not intended or designed to be mental health facilities. . . [I]ndividuals  
should be treated whenever and wherever possible in community treatment settings and not in  
jails.”].

<sup>12</sup> Department of State Hospitals, *2024-25 Governor’s Budget Estimate*, p. 12  
<[https://www.dsh.ca.gov/About\\_Us/docs/2024-25\\_Governors\\_Budget\\_Estimate.pdf](https://www.dsh.ca.gov/About_Us/docs/2024-25_Governors_Budget_Estimate.pdf)> (as of April  
11, 2024).

1 *supra*, 65 Cal.App.5th 691, for instance, DSH only provides aggregate numbers of people enrolled  
2 in EASS. While DSH has acknowledged that only a minority of individuals enrolled in EASS are  
3 restored to competency,<sup>13</sup> and described DSH as a “pre-admission treatment program,” DSH has  
4 produced no data—in Status Reports or anywhere else—regarding whether EASS-enrolled  
5 individuals are subsequently transferred to treatment in another facility, and if so, after how long.

6 **B. Petitioner’s CPRA Request and DSH’s Response**

7 22. On September 14, 2023, ACLU requested, pursuant to the CPRA, that DSH  
8 produce certain records related to DSH’s IST waitlist and DSH’s provision of competency  
9 restoration services to IST patients. The Request sought: 1) records concerning the in-custody  
10 deaths of individuals deemed IST over the past five years and removed from the IST waitlist as a  
11 result (“Category 1”); 2) information to substantiate and explain the outcomes, and wait times for  
12 programming or treatment, for individuals deemed IST, as presented in the *Stiavetti* Status  
13 Reports (“Category 2”); 3) information concerning the outcomes of participants enrolled in  
14 DSH’s EASS, which provides jail-based programming for individuals deemed IST and on the  
15 waitlist (“Category 3”); and 4) commitment orders, orders for sanctions, and orders to show cause  
16 from Superior Courts across the state for failure to admit IST patients (“Category 4”). A true and  
17 correct copy of the CPRA Request is attached hereto as **exhibit A** at pp. 23–26.

18 23. DSH repeatedly gave itself extensions of time to determine whether the CPRA  
19 Request sought disclosable public records in DSH’s possession, on September 22, 2023, October  
20 6, 2023, October 20, 2023, November 3, 2023, and December 6, 2023. The extension requests  
21 cited “unusual circumstances” due to the involvement of “separate offices” and the need to  
22 examine “a voluminous amount of records.” True and correct copies of these communications are  
23 attached hereto as **exhibit A** at pp. 81-85, 78-81, 74-77, 71–74, 62-65, respectively.

24 24. On October 16, 2023, ACLU and DSH met via video conference to discuss the  
25 CPRA Request. In this meeting, DSH stated that it had completed review for Categories 1, 2, and  
26 3 of the CPRA Request and anticipated promptly providing a formal response and producing  
27

28 <sup>13</sup> Fewer than 20% are deemed restored to competency while enrolled in EASS. *Id.* at p. 13.

1 responsive nonexempt records. In response to a request from DSH that the ACLU consider  
2 whether it seeks DSH’s production of heavily redacted court orders responsive to Category 4,  
3 ACLU requested that DSH provide a “sample” of those redacted court orders “along with an  
4 explanation of the agency’s justification for any redactions” to allow the parties “to resolve any  
5 concerns about the redactions prior to any rolling production of redacted responsive records.” A  
6 true and correct copy of the ACLU’S October 17, 2023 correspondence memorializing the  
7 October 16 meeting is attached hereto as **exhibit A** at p. 89.

8         25. On October 24, 2023, DSH produced six sample court orders responsive to  
9 Category 4 of the CPRA Request. In justification of its redactions, DSH stated it “must comply  
10 with the Health Insurance Portability and Accountability Act (HIPAA), the Information Practices  
11 Act (IPA) (Civ. Code § 1798 et. Seq.), and the Lanterman-Petris-Short Act (Welf. & Inst. Code, §  
12 5328, et. Seq.)” and provided its Policy Directive 6300, titled “Data De-Identification and  
13 Redaction of Confidential Patient Information” and the “Data De-Identification Guidelines”  
14 identified in the directive. DSH identified that it made redactions to the court orders “pursuant to  
15 the Safe Harbor requirements under HIPAA and the IPA,” and that no other HIPAA compliant  
16 method of production would change the outcome. Among the redactions were, *e.g.*, county  
17 names, the names of judges, and all dates, including the date of any court orders. True and correct  
18 copies of the October 24, 2023 communication, along with the attached Policy Directive 6300  
19 and Data De-Identification Guidelines, are attached hereto as **exhibit A** at pp. 90–91 and 92–166,  
20 respectively. True and correct copies of a subset of the sampling of court orders are attached  
21 hereto as **exhibit A** at pp. 167–188.

22         26. On November 6, 2023, DSH produced additional records. In response to Category  
23 1, DSH stated that it “has been notified that from January 2018 to the date of [the CPRA  
24 Request], there have been approximately thirty-five, (35), individual[s] who have been removed  
25 from the IST waitlist due to death.” DSH refused to produce any information about these  
26 individuals aside from this statistic, asserting that “[t]o the extent that the [DSH] may have  
27 individual records that may contain responsive information, the [DSH] is prohibited by law from  
28 releasing individual patient information . . . pursuant to laws that include the following: Federal

1 Health Insurance Portability and Accountability Act, (HIPPA) [*sic*], specifically Title 45, Code of  
2 Federal Regulation section 164.500 and California Welfare Institutions Code section 5328.”  
3 DSH further noted that this number may be under-inclusive as “not all counties within California  
4 may notify the Department as to the reason that an individual needs to be removed from the IST  
5 waitlist” and “[t]he Department does not maintain information for individuals who die outside of  
6 DSH custody.” In response to Category 2, DSH produced only the July 2023 Status Report  
7 publicly filed in *Stiavetti*, which had been referenced in a footnote in the original request. In  
8 response to Category 3, DSH produced two more Status Reports previously publicly filed in  
9 *Stiavetti* in October 2022 and April 2023. In response to Category 4, DSH stated that it awaited  
10 ACLU’s response as to whether Category 4 would be withdrawn from the CPRA Request. A true  
11 and correct copy of this communication is attached hereto as **exhibit A** at pp. 65–70. A true and  
12 correct copy of the July 2023 Status Report is attached hereto as **exhibit A** at pp. 188–197.

13 27. On December 6, 2023, ACLU requested confirmation about whether DSH  
14 considered its production of records responsive to Categories 1, 2, and 3; and re-asserted that it  
15 did “not wish to withdraw” the request for Category 4 records, but rather “wish[ed] to sustain  
16 [the] request for these records for purposes of resolving these disagreements regarding the  
17 propriety of any withholdings.” A true and correct copy of this communication is attached hereto  
18 as **exhibit A** at p. 62.

19 28. On December 22, 2023, DSH made its second rolling production, producing 19  
20 more heavily redacted court orders responsive to Category 4 of the CPRA Request. DSH stated  
21 that it redacted “phone numbers and personal information which are not subject to disclosure  
22 under the PRA.” The redactions again included all names, dates, and key numbers, such as the  
23 number of the individual on the waitlist. DSH also asserted that it had produced on November 6,  
24 2023 “[a]ll responsive records and information within the [DSH’s] possession” to Categories 1, 2  
25 and 3(a) of the CPRA Request. Category 3(a) seeks information concerning the number of EASS  
26 participants admitted to various programming, found competent, found unlikely to be restored, or  
27 pending placement. DSH stated that it continued to evaluate whether it possessed records  
28

1 responsive to the remaining sub-categories of Category 3. A true and correct copy of this  
2 communication is attached hereto as **exhibit A** at p. 53–59.

3 29. On January 4, 2024, ACLU e-mailed DSH to request “a final, complete  
4 determination as to what records will be released without further delay, along with an estimated  
5 date for when [DSH] anticipate[s] producing all remaining records.” ACLU also clarified a  
6 formatting error in the original request.<sup>14</sup> A true and correct copy of this communication is  
7 attached hereto as **exhibit A** at p. 53.

8 30. On January 12, 2024, DSH made its third rolling production, producing a further 31  
9 redacted court orders in response to Category 4. A true and correct copy of this communication is  
10 attached hereto as **exhibit A** at pp. 46–52.

11 31. Also on January 12, 2024, DSH sent ACLU an e-mail, in which DSH re-affirmed  
12 that it had completed its production in response to Categories 1 and 2 of the CPRA Request on  
13 November 6, 2023 and continued to produce records responsive to Category 4. As to Category 3,  
14 DSH stated that it “has not produced a response with respect to Request 3 and is continuing to  
15 evaluate the request to determine whether it possesses responsive records.” DSH also stated that  
16 “it will provide a rolling response with any responsive records in its possession for Request 3”  
17 “[o]nce [it] concludes production of responsive records for Request 4.” A true and correct copy of  
18 this communication is attached hereto as **exhibit A** at pp. 199–200.

19 32. On January 25, 2024, DSH and ACLU met via video conference. In an e-mail  
20 memorializing the meeting sent on the same day, ACLU stated that it “disagree[s] with the  
21 redactions in the orders [responsive to Category 4] and do[es] not believe they comply with the  
22 CPRA” and is therefore “amenable to a pause in further production at this time” to allow DSH to  
23 prioritize its response to Category 3. ACLU further clarified that Category 2 “seeks the  
24 *underlying documents and anonymized, individualized data* that DSH used to create the summary  
25 data that is publicly available in the Status Updates filed with the Superior Court in *Stiavetti v.*  
26 *Clendenin*, No. RG15779731.” (Emphasis in original.) The only record that DSH had previously  
27

28 <sup>14</sup> Category 3 only contained three subparts (*i.e.* no Category 3(d)).

1 produced responsive to Category 2 were these Status Reports, which had been publicly filed in  
2 *Stiavetti*, and referenced in the CPRA Request. A true and correct copy of this communication is  
3 attached hereto as **exhibit A** at pp. 209–210.

4 33. On February 9, 2024, DSH made its fourth rolling response, producing a further 29  
5 heavily redacted court orders responsive to Category 4. A true and correct copy of this  
6 communication is attached hereto as **exhibit A** at pp. 40–46.

7 34. On February 22, 2024, ACLU emailed DSH. In this email, ACLU re-affirmed that  
8 DSH should prioritize production of records responsive to Category 3 and pause production of  
9 the heavily redacted court orders DSH was producing in response to Category 4. ACLU also re-  
10 affirmed its interest in the “*underlying documents and anonymized, individual data* that DSH  
11 used to create the summary data that is publicly available in the Status Updates filed with the  
12 Superior Court in *Stiavetti v. Clendenin*,” and identified it was not interested in only these  
13 publicly filed summary reports. (Emphasis in original.) Lastly, ACLU contested DSH’s assertion  
14 that records responsive to Categories 1 and 4 were properly withheld “to protect privacy interests  
15 pursuant to Government Code, section 7927.700, the Health Insurance Portability and  
16 Accountability Act of 1996 (“HIPAA”), the Information Practices Act (Civ. Code, § 1798, et.  
17 seq.) and the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5328, et. seq.)” A true and  
18 correct copy of this communication is attached hereto as **exhibit A** at pp. 207–209.

19 35. DSH responded to the ACLU on the same day, stating that DSH “is a health care  
20 provider . . . bound by higher standards of privacy than other agencies” and “governed by the  
21 Health Insurance Portability and Accountability Act, (HIPPA) [*sic*], the Information Practices  
22 Act (IPA) (Civ. Code, § 1798, et. seq.), and the more restrictive privacy provisions under the  
23 Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5328, et. seq.)” A true and correct  
24 copy of this communication is attached hereto as **exhibit A** at pp. 206–207.

25 36. On February 26, 2024, DSH made its fifth rolling production, producing an  
26 additional 19 heavily redacted court orders. In response to Category 2, DSH stated that it “d[id]  
27 not possess any records containing the ‘underlying documents and anonymized, individualized  
28 data’ requested.” DSH further stated that “[t]o provide a response” to Categories 2 and 3(b-c) of



1 the CPRA Request, “DSH would be required to extrapolate and aggregate numerous volumes of  
2 records and data across multiple, unlinked databases, which would constitute the creation of a  
3 new record and fall beyond the authority and purview of the [CPRA].” DSH further contested its  
4 obligation to produce records responsive to these Categories of the CPRA Request, asserting that  
5 it was “unable to provide any raw patient data responsive to this request pursuant to Government  
6 Code section 7927.700 and 7927.705, the federal Health Insurance Portability and Accountability  
7 Act (HIPAA), specifically Title 45, Code of Federal Regulations sections 164.500 et seq. (2013);  
8 and Welfare and Institutions Code section 5328.” A true and correct copy of this communication  
9 is attached hereto as **exhibit A** at pp. 34–40.

10 37. On March 5, 2024, ACLU requested that, consistent with DSH’s obligations under  
11 Government Code section 7922.600, DSH provide additional information regarding the data  
12 which DSH keeps and the obstacles to extracting that data in response to the CPRA Request  
13 when it had “extrapolate[d], aggregate[d] and analyze[d] the data from these databases to produce  
14 the aggregate data in the publicly available ‘status update’ reports DSH file[d] in response to the  
15 *Stiavetti* court order”; and what records DSH was withholding responsive to Category 1 regarding  
16 the deaths of people in DSH custody on the IST waitlist. A true and correct copy of this  
17 communication is attached hereto as **exhibit A** at pp. 205–206.

18 38. DSH responded to ACLU on March 14, 2024, asserting that it tracks information in  
19 “unique and stand-alone database[s]” for different DSH programs, and “each of these databases  
20 contain unique and sensitive data which can only be extrapolated through creation of an entirely  
21 new record, which is not required under the [CPRA].” DSH further contended that the CPRA  
22 does not require that DSH “‘extrapolate,’ ‘aggregate,’ and ‘analyze’ data from each of its patient  
23 treatment databases” as the court required DSH to do in *Stiavetti*. DSH provided no information  
24 regarding the records it was withholding related to Category 1, concerning the deaths of  
25 individuals on the IST waitlist. A true and correct copy of this communication is attached hereto  
26 as **exhibit A** at pp. 202–204.





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3. That the Court issue an injunction requiring Respondent DEPARTMENT OF STATE HOSPITALS to produce all non-exempt, requested public records;

4. That Petitioner be awarded attorneys' fees and costs pursuant to Code of Civil Procedure, section 1021.5 and Government Code, section 7923.115, subd. (a); and

5. For such and further relief as the Court deems proper and just.

Dated: April 15, 2024

Respectfully submitted,

By: 

SHAILA NATHU (SBN 314203)  
snathu@aclunc.org  
EMI MACLEAN (SBN 319071)  
emaclean@aclunc.org  
ANGELICA SALCEDA (SBN 296152)  
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**VERIFICATION**

I, Abdi Soltani, am the Executive Director of the American Civil Liberties Union of Northern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate and know the contents thereof. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. I have authorization to verify such facts on behalf of the ACLU of Northern California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 12, 2024



Abdi Soltani

# **EXHIBIT A**



Northern  
California

September 14, 2023

California Department of State Hospitals  
ATTN: Public Records Act Coordinator  
1215 O Street, MS-5  
Sacramento, CA 95814

*VIA DSH PRA PORTAL*

**RE: PUBLIC RECORDS ACT REQUEST**

DSH Public Records Act Coordinator:

On behalf of the American Civil Liberties Union of Northern California, I am writing to request records pursuant to the California Public Records Act and the California Constitution, art. I, § 3(b)(2). I am requesting records related to the Department of State Hospital's ("DSH") Incompetent to Stand Trial ("IST") waitlist and DSH's provision of restoration services to IST patients. This request seeks records concerning 1) the deaths of individuals deemed IST over the past five years; 2) information to substantiate and explain the outcomes, and wait times for programming or treatment, for individuals deemed IST; 3) information concerning the outcomes of participants in Early Access and Stabilization Services ("EASS"); and 4) commitment orders and orders to show cause provided by Superior Courts across the state. I am requesting these records in the public interest given the systemic constitutional violations and significant human and financial costs of the prolonged delays of access to competency restoration treatment for people deemed IST.

The specific records I request are:

- 1. Information about deaths of individuals deemed IST but not admitted to treatment:** All documents and data<sup>1</sup> related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:
  - a. The number of individuals who were removed from the IST waitlist due to death; and
  - b. Data or other information about people who died after having been deemed IST:
    - i. Date of arrest;
    - ii. Offense charged;
    - iii. Date of commitment to DSH;
    - iv. Date of death;

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<sup>1</sup> Requests for data are a shorthand for requesting records containing that data, including database reports regardless of whether they are generated in the usual course of operations.

- v. Cause and manner of death, and;
- vi. County of referral.

**2. Documents and/or data sufficient to show and/or permit the calculation of the following information:<sup>2</sup>**

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:
    - i. Early Access and Stabilization Services (“EASS”);
    - ii. Department of State Hospitals Inpatient Programs;
    - iii. Jail Based Competency Programs;
    - iv. Community Based Health Facilities;
    - v. Diversion;
    - vi. Community Based Restoration;
    - vii. Conditional Release Program;
    - viii. LA County Off-Ramps;
    - ix. DSH Re-evaluation Services – found competent;
    - x. DSH Re-evaluation Services – unlikely to restore.
  - b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.
  - c. Total number of admissions delayed due to the following reasons:
    - i. Delay of Critical Records;
    - ii. Medical Circumstances;
    - iii. Out of Custody;
    - iv. Pending Court Hearings and Proceedings;
    - v. Transportation Related.
  - d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.
- 3. Information about the outcomes of EASS participants:** For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:
- a. The number of participants with the following outcomes:
    - i. Admitted to State Hospital;
    - ii. Admitted to a Jail Based Competency Program;
    - iii. Admitted to a Community Based In-patient Program;
    - iv. Admitted into Diversion;
    - v. LA County Off-Ramp;

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<sup>2</sup> Note that this information was publicly filed in the attached July 25, 2023, Status Update filed with the Superior Court in *Stiavetti v. Clendenin*, No. RG15779731 (Exhibit A).



- vi. Found Competent;
          - vii. Found Unlikely to Restore, and;
          - viii. Pending Placement
        - b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and
        - c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant was admitted to a state hospital);
        - d. was admitted to a state hospital);
4. **Court orders:** Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:
  - a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
  - b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
  - c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Government Code § 7922.600(a) requires that you assist in the making of a focused and effective request that reasonably describes an identifiable record or records by (1) providing assistance in identifying responsive records and information; (2) describing the information technology and physical location in which the records exist; and (3) providing suggestions to overcome any practical basis that you assert as a reason to delay or deny access to the records or information sought.

If you claim that portions of any responsive records are exempt from disclosure, the PRA requires that you provide the basis for the exemption and that you also segregate and redact such information so that the remainder of the responsive records may be disclosed. For example, if you contend that the data contained in any report are exempt from disclosure, please provide the remainder of the record so that we can see what types of data are being reported. If you believe that the data is not reasonably segregable, we request your assistance in identifying responsive records and information and describing that information pursuant to Government Code § 7922.600(a). If any of the requested information is unavailable because of privacy or other limitations, please provide the maximum available responsive information.

Pursuant to Government Code § 7922.535(a), you are required to respond to this request within 10 days. Please include the estimated date that you will make records available. If you have questions regarding the scope of the request or anticipate that the time needed will exceed 10 days, please contact me at [emaclean@aclunc.org](mailto:emaclean@aclunc.org). Please send all documents as soon as possible and on a rolling basis if necessary.

Thank you in advance for your compliance with this request.

Sincerely,

Emi MacLean  
Senior Staff Attorney  
ACLU Foundation of Northern California

# R230262-091423 - Public Records Act Request

## Message History (16)

✉ On 3/27/2024 9:59:54 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

March 27, 2024

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's sixth set of responses, Rolling Response VI. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

a. The number of individuals who were removed from the IST waitlist due to death; and

b. Data or other information about people who died after having been deemed IST:

i. Date of arrest;

ii. Offense charged;

- iii. Date of commitment to DSH;
- iv. Date of death;
- v. Cause and manner of death, and;
- vi. County of referral.

**RESPONSE:** All responsive records and information within the Department's possession for this request were produced in the first rolling response dated on November 6, 2023.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services ("EASS");
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;

- ii. MedicalCircumstances;
- iii. Out ofCustody;
- iv. PendingCourt Hearings and Proceedings;
- v. TransportationRelated.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE:** The Department provided all responsive records within its possession for this request in its first rolling response on November 6, 2023. However, on January 25, 2024, during a conference call, you raised a secondary request related to request #2 of this PRA, in which you informed the Department that you were seeking the “the underlying documents and anonymized, individualized data” used to create publicly available status updates for the Court.

After a diligent search, pursuant to your secondary request, of all DSH records and databases utilized for the above referenced patient treatment programs, DSH has determined it does not possess any records containing the information sought for your secondary request. To provide a response to this secondary request, DSH would be required to extrapolate and aggregate numerous volumes of records and data across multiple, unlinked databases, which would constitute the creation of a new record and fall beyond the authority and purview of the Public Records Act.

Additionally, the Department is unable to provide any raw patient data responsive to this request pursuant to Government Code sections 7927.700 and 7927.705, the federal Health Insurance Portability and Accountability Act (HIPAA), specifically Title 45, Code of Federal Regulations sections 164.500 et seq. (2013); and Welfare and Institutions Code section 5328. The department does not have any public records that constitute “underlying documents and anonymized, individualized data.”

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

- a. The number of participants with the following outcomes:
- i. Admitted to State Hospital;
  - ii. Admitted to a Jail Based Competency Program;
  - iii. Admitted to a Community Based In-patient Program;
  - iv. Admitted into Diversion;
  - v. LA County Off-Ramp;
  - vi. Found Competent;
  - vii. Found Unlikely to Restore, and;
  - viii. Pending Placement
- b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and
- c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant was admitted to a state hospital);

**RESPONSE:** All responsive records within the Department's possession for request 3, sub-request (a.) were produced in the first rolling response dated on November 6, 2023.

After a diligent search of all DSH records and databases utilized for the above referenced patient treatment programs, DSH has determined it does not possess any additional records containing the information sought in sub-requests (b.) and (c.) of this PRA. To provide a response to these sub-requests, DSH would be required to extrapolate and aggregate numerous volumes of records and data across multiple, unlinked databases, which would constitute the creation of a new record and fall beyond the authority and purview of the Public Records Act.

Additionally, the Department is unable to provide any raw patient data responsive to this request pursuant to Government Code sections 7927.700 and 7927.705, the federal Health Insurance Portability and Accountability Act (HIPAA), specifically Title 45, Code of Federal Regulations sections 164.500 et seq. (2013); and Welfare and Institutions Code section 5328.

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

**RESPONSE:** The Department provided all responsive records to sub-request (b.) of this PRA in rolling responses 2 and 3. The Department has also provided all responsive records for sub-request (a.) of this PRA in rolling responses 3 and 4 and in this, 5<sup>th</sup>, rolling response.

The Department has located documents responsive to sub-request (c.) of this PRA, the first batch of which is listed in the chart below. The responsive records requested contain phone numbers and personal information which are not subject to disclosure under the PRA pursuant to Civil Code section 1798.3, and Government Code, section 7927.700. Those portions have been redacted. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:

#	DOCUMENT NAME	Pages
1)	#1	2
2)	#2	2
3)	#3	13
4)	#4	3

5)	#5	2
6)	#6	3
7)	#7	2
8)	#8	2
9)	#9	4
10)	#10	2
11)	#11	3
12)	#12	3
13)	#13	3
14)	#14	3
15)	#15	3
16)	#16	4
17)	#17	3
18)	#18	2
19)	#19	4
20)	#20	2



21)	#21	2
22)	#22	3
23)	#23	2
24)	#24	3
25)	#25	4
26)	#26	4
27)	#27	4
<b>TOTAL PAGES: 87</b>		

Sincerely,

Records Coordination Unit

For BRENT W. REDEN  
DeputyDirector/Chief Counsel

 On 2/26/2024 11:06:51 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

February 26, 2024

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's fifth set of responses, Rolling Response V. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

**RESPONSE:** All responsive records and information within the Departments possession for this request were produced in the first rolling response dated on November 6, 2023.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services (“EASS”);
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE:** The Department provided all responsive records within its possession for this request in its first rolling response on November 6, 2023. However, on January 25, 2024, during a conference call, you raised a secondary request related to request #2 of this PRA, in which you informed the Department that you were seeking the “the underlying documents and anonymized, individualized data” used to create publicly available status updates for the Court.

After a diligent search, pursuant to your secondary request, of all DSH records and databases utilized for the above referenced patient treatment programs, DSH has determined it does not possess any records containing the information sought for your secondary request. To provide a response to this secondary request, DSH would be required to extrapolate and aggregate numerous volumes of records and data across multiple, unlinked databases, which would constitute the creation of a new record and fall beyond the authority and purview of the Public Records Act.

Additionally, the Department is unable to provide any raw patient data responsive to this request pursuant to Government Code sections 7927.700 and 7927.705, the federal Health Insurance Portability and Accountability Act (HIPAA), specifically Title 45, Code of Federal Regulations sections 164.500 et seq. (2013); and Welfare and Institutions Code section 5328. The department does not have any public records that constitute “underlying documents and anonymized, individualized data.”

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;

- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant was admitted to a state hospital);

**RESPONSE: All responsive records within the Department's possession for request 3, sub-request (a.) were produced in the first rolling response dated on November 6, 2023.**

**After a diligent search of all DSH records and databases utilized for the above referenced patient treatment programs, DSH has determined it does not possess any additional records containing the information sought in sub-requests (b.) and (c.) of this PRA. To provide a response to these sub-requests, DSH would be required to extrapolate and aggregate numerous volumes of records and data across multiple, unlinked databases, which would constitute the creation of a new record and fall beyond the authority and purview of the Public Records Act.**

**Additionally, the Department is unable to provide any raw patient data responsive to this request pursuant to Government Code sections 7927.700 and 7927.705, the federal Health Insurance Portability and Accountability Act (HIPAA), specifically Title 45, Code of Federal Regulations sections 164.500 et seq. (2013); and Welfare and Institutions Code section 5328.**

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration

treatment, to individuals deemed IST in a timely manner;

b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

**RESPONSE:** The Department provided all responsive records to sub-request (b.) of this PRA in rolling responses 2 and 3. The Department has also provided all responsive records for sub-request (a.) of this PRA in rolling responses 3 and 4 and in this, 5<sup>th</sup>, rolling response.

The Department has located documents responsive to your request listed in the chart below. The responsive records requested contain phone numbers and personal information which are not subject to disclosure under the PRA pursuant to Civil Code section 1798.3, and Government Code, section 7927.700. Those portions have been redacted. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:

#	DOCUMENT NAME	Pages
1)	#62	44
2)	#63	44
3)	#64	44
4)	#65	44
5)	#66	44
6)	#67	44

7)	#68	44
8)	#69	44
9)	#70	44
10)	#71	44
11)	#72	44
12)	#73	1
13)	#75	9
14)	#80	4
15)	#81	1
16)	#84	2
17)	#86	1
18)	#87	3
19)	#88	6
<b>TOTAL PAGES: 511</b>		

The Department will now begin to provide you with responsive records to sub-request (c.) in future rolling responses scheduled to begin in the next few weeks. During our conference call on January 25, 2024, DSH informed you that sub-request (c.) contained approximately 1500 responsive records which would have to be reviewed and

redacted/de-identified for all patient sensitive data. During this conference call, you agreed to “pause” your request for records for Request 4(c.) of this PRA to allow the Department adequate time to respond to requests 2 and 3 of this PRA. Based upon the conclusion of responses regarding requests 2 and 3 as set forth above, the Department is now resuming its collection and redaction/de-identification of all responsive records for sub-request 4 (c.), however due to the large quantity of responsive records for sub-request 4(c.), the Department estimates that it will require an additional 4 or 5 months, approximately, to provide all responsive records for this sub-request.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

 On 2/9/2024 2:38:13 PM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

February 9, 2024

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262



Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's third set of responses, Rolling Response IV. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

**RESPONSE:** All responsive records and information within the Department's possession for this request were produced in the first rolling response dated on November 6, 2023.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:
  - i. Early Access and Stabilization Services ("EASS");

- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE:** All responsive records within the Department's possession for this request were produced in the first rolling response dated on November 6, 2023.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS

program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant was admitted to a state hospital);

**RESPONSE:** All responsive records within the Department's possession for request 3, sub-request (a.) were produced in the first rolling response dated on November 6, 2023. DSH is in the process of reviewing request 3, sub-requests (b.) and (c.) to determine if it possesses responsive records. DSH will produce all responsive records, if any, for these sub-requests in future rolling responses.

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

c. Ordering individuals deemed IST committed to DSH custody for competency restoration

treatment.

**RESPONSE:** The Department has located documents responsive to your request listed in the chart below. The responsive records requested contain phone numbers and personal information which are not subject to disclosure under the PRA pursuant to Civil Code section 1798.3, and Government Code, section 7927.700. Those portions have been redacted. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:

#	DOCUMENT NAME	Pages
1)	#34_Redacted	3
2)	#36_Redacted	3
3)	#38_Redacted	3
4)	#39_Redacted	1
5)	#40_Redacted	3
6)	#41(a)_Redacted	9
7)	#41(b)_Redacted	9
8)	#43_Redacted	2
9)	#44_Redacted	17
10)	#46_Redacted	42
11)	#47_Redacted	2

12)	#48_Redacted	5
13)	#50_Redacted	9
14)	#51-1_Redacted	3
15)	#51-2_Redacted	3
16)	#51-3_Redacted	3
17)	#52(a)_Redacted	3
18)	#52(b)_Redacted	3
19)	#52-2_Redacted	3
20)	#53_Redacted	3
21)	#53-2_Redacted	3
22)	#54_Redacted	3
23)	#55_Redacted	2
24)	#56_Redacted	44
25)	#57_Redacted	44
26)	#58_Redacted	44
27)	#59_Redacted	44

28)	#60_Redacted	44
29)	#61_Redacted	44
<b>TOTAL PAGES: 401</b>		

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

DeputyDirector/Chief Counsel

 On 1/12/2024 4:36:07 PM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

January 12, 2024

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's third set of responses, Rolling Response III. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

**RESPONSE:** All responsive records and information within the Department's possession for this request were produced in the first rolling response dated on November 6, 2023.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. EarlyAccess and Stabilization Services (“EASS”);
- ii. Departmentof State Hospitals Inpatient Programs;
- iii. JailBased Competency Programs;
- iv. CommunityBased Health Facilities;
- v. Diversion;
- vi. CommunityBased Restoration;
- vii. ConditionalRelease Program;
- viii. LACounty Off-Ramps;
- ix. DSHRe-evaluation Services – found competent;
- x. DSHRe-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programslisted in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delayof Critical Records;
- ii. MedicalCircumstances;
- iii. Out ofCustody;
- iv. PendingCourt Hearings and Proceedings;
- v. TransportationRelated.

d. For the categories of delayed admissions listed in 2.c.i. through2.c.v. (above), the number of individuals whose admissions were delayed for thefollowing time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE:** All responsive records within the Departmentspossession for this request were produced in the first rolling response dated onNovember 6, 2023.



3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant was admitted to a state hospital);

**RESPONSE: All responsive records within the Department's possession for request 3, sub-request (a.) were produced in the first rolling response dated on November 6, 2023. DSH is in the process of reviewing request 3, sub-requests (b.) and (c.) to determine if it possesses responsive records. DSH will produce all responsive records, if any, for these sub-requests in future rolling responses.**

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration

treatment, to individuals deemed IST in a timely manner;

c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

**RESPONSE:** The Department has located documents responsive to your request listed in the chart below. The responsive records requested contain phone numbers and personal information which are not subject to disclosure under the PRA pursuant to Civil Code section 1798.3, and Government Code, section 7927.700. Those portions have been redacted. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:

#	DOCUMENT NAME	Pages
1)	27	5
2)	28	18
3)	29	18
4)	30	5
5)	31	5
6)	#6	10
7)	#7	1
8)	#8	1
9)	#9	3

10)	#10	3
11)	#11	10
12)	#12	16
13)	#13	3
14)	#14	3
15)	#15	3
16)	#16	3
17)	#17	2
18)	#18	2
19)	#19	2
20)	#21	1
21)	#22	3
22)	#23	3
23)	#24	3
24)	#24(b)	3
25)	#24(c)	3

26)	#25	3
27)	#26	1
28)	#27	3
29)	#28	3
30)	#39	1
31)	#30	3
<b>TOTAL PAGES: 143</b>		

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

DeputyDirector/Chief Counsel

← On 1/4/2024 12:06:57 PM, Emi MacLean wrote:

Counsel,

We received your December 22, 2023 letter regarding our September 14, 2023 CPRA request via the DSH portal. We understand that DSH is asserting that it has provided complete responses to all of the items in Request R230262-091423 except for two sub-items in 3. To be clear, these are requesting only the following:

- 3b requests data and/or documents sufficient to show: The duration of time after IST commitment which EASS participants received the outcomes listed in 3(a)(i)-(viii) (e.g., time after IST commitment when an EASS participant was admitted to a state hospital).
- 3c requests data and/or documents sufficient to show: The duration of time after EASS enrollment which EASS participants received the outcomes listed in 3(a)(i)-(viii) (e.g., time after IST commitment when an EASS participant was admitted to a state hospital).

There is no 3d; that bullet item appeared due to a formatting error only.

We understand that 3b and 3c are the only outstanding items remaining in this request. Given the limited scope of these requests, we do not understand the cause for delay and the need for rolling production. Moreover, the CPRA's limits for issuing a determination with regards to this request have long past; the statute allows only a single 14-day extension.

Please provide a final, complete determination as to what records will be released without further delay, along with an estimated date for when you anticipate producing all remaining records.

Best,  
Emi

Emi MacLean  
Senior Staff Attorney  
ACLU of Northern California  
929 375 1575  
she/her

✉ On 12/22/2023 10:46:50 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

December 22, 2023

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's second set of responses, Rolling Response II. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

**RESPONSE: All responsive records and information within the Department's possession**

for this request were produced in the first rolling response dated on November 6, 2023.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services (“EASS”);
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33

days, 34-45 days, 46-60 days, 61-90days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE: All responsive records within the Departments possession for this request were produced in the first rolling response dated on November 6, 2023.**

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant

d. was admitted to a state hospital);

**RESPONSE: All responsive records within the Departments possession for request 3, sub-request (a.) was produced in the first rolling response dated on November 6, 2023. DSH is in the process of reviewing request 3, sub-requests (b.), (c.) and (d.) to determine if it possesses responsive records. DSH will produce all responsive records, if any, for these sub-requests in future rolling responses.**



4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

**RESPONSE:** The Department has located documents responsive to your request listed in the chart below. The responsive records requested contain phone numbers and personal information which are not subject to disclosure under the PRA pursuant to Civil Code section 1798.3, and Government Code, section 7927.700. Those portions have been redacted. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:

#	DOCUMENT NAME	Pages
1)	16	18
2)	17	5
3)	18	18
4)	19	15
5)	20	15
6)	21	5

7)	22	15
8)	23	15
9)	24	15
10)	25	15
11)	26	15
12)	32	5
13)	33	5
14)	34	5
15)	35	5
16)	36	4
17)	37	16
18)	38	17
19)	39	16
<b>TOTAL PAGES: 224</b>		

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

DeputyDirector/Chief Counsel

✉ On 12/20/2023 8:43:34 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

December 20, 2023

Sent by GovQA

Emi MacLean

hamirali@aclunc.org

RE: Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

a. The number of individuals who were removed from the IST waitlist due to death; and

b. Data or other information about people who died after having been deemed IST:

- i. Date of arrest;
- ii. Offense charged;
- iii. Date of commitment to DSH;
- iv. Date of death;
- v. Cause and manner of death, and;
- vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services (“EASS”);
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of

individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant

d. was admitted to a state hospital);

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Pursuant to Government Code section 7922.535, subdivision (b), the Department is extending the time in which to issue a determination of whether or not your request seeks copies of disclosable records in the possession of the Department. Additional time is needed to search for and collect any requested records that may be responsive to your request because separate offices are involved (Gov. Code, § 7922.535, subd. (c)(1)) and a voluminous amount of records must be examined (Gov. Code, § 7922.535, subd. (c)(2)). The Department reserves the right to assert any exemptions from the PRA.

A determination will be made within 14 days from the date of this message. You will receive an e-mail notification of the determination and, if applicable, the date and time the records will be available. Additionally, there is a \$0.10 per page copy cost for any available records mailed to you.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

↩ On 12/6/2023 10:04:49 AM, Emi MacLean wrote:

Dear Mr. Reden,

We are in receipt of your November 6, 2023, written response to our PRA request R230262-091423 and three status update documents uploaded to DSH's PRA portal. Your correspondence indicates that you are awaiting a response from us as to whether we agree to withdraw category 4 of our request, which seeks court orders related to IST proceedings, following the production of several sample orders. As noted in the October 15 meet and confer, and our October 24 email, we do not wish to withdraw that request. We wish to sustain our request for these records for purposes of resolving these disagreements regarding the propriety of any withholdings.

With regard to categories 1, 2, and 3 of our PRA request, please confirm whether you consider the production complete or intend to produce additional responsive records.

Thank you very much for your attention to this matter.

Best,  
Emi MacLean

✉ On 12/6/2023 8:33:16 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

December 6, 2023

Sent by GovQA

Emi MacLean

hamirali@aclunc.org

RE: Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:
  - i. Early Access and Stabilization Services ("EASS");
  - ii. Department of State Hospitals Inpatient Programs;

- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;
- x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant



d. was admitted to a state hospital);

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Pursuant to Government Code section 7922.535, subdivision (b), the Department is extending the time in which to issue a determination of whether or not your request seeks copies of disclosable records in the possession of the Department. Additional time is needed to search for and collect any requested records that may be responsive to your request because separate offices are involved (Gov. Code, § 7922.535, subd. (c)(1)) and a voluminous amount of records must be examined (Gov. Code, § 7922.535, subd. (c)(2)). The Department reserves the right to assert any exemptions from the PRA.

A determination will be made within 14 days from the date of this message. You will receive an e-mail notification of the determination and, if applicable, the date and time the records will be available. Additionally, there is a \$0.10 per page copy cost for any available records mailed to you.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN  
Deputy Director/Chief Counsel

 On 11/6/2023 9:01:27 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423  
**Body:**

November 6, 2023

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE: Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals, (DSH), received your Public Records Act (PRA) Request described below. DSH is providing Rolling Responses. Below is DSH's first set of responses, Rolling Response I. All new responses are in **bold**. The next set of responses will be provided within 30 days from the date of this letter:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:
  - a. The number of individuals who were removed from the IST waitlist due to death; and
  - b. Data or other information about people who died after having been deemed IST:
    - i. Date of arrest;
    - ii. Offense charged;
    - iii. Date of commitment to DSH;
    - iv. Date of death;
    - v. Cause and manner of death, and;
    - vi. County of referral.

**RESPONSE:** The Department has been notified that from January 2018 to the date of your request, there have been approximately thirty-five, (35), individual who have been removed from the IST waitlist due to death. Please note that not all counties within California may notify the Department as to the reason that an individual needs to be removed from the IST waitlist. The Department does not maintain information for individuals who die outside of DSH custody. The Department may learn of injury or death of IST patients waiting for admission into a DSH program to the extent it impacts admission or placement, e.g. cancelled transportation for admission or the Court's discharge of a commitment order.

To the extent that the Department may have individual records that may contain responsive information, the Department is prohibited by law from releasing individual patient information you requested pursuant to laws that include the following: Federal Health Insurance Portability and Accountability Act, (HIPPA), specifically Title 45, Code of Federal Regulation section 164.500 and California Welfare and Institutions Code section 5328.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services ("EASS");
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;
- vi. Community Based Restoration;
- vii. Conditional Release Program;
- viii. LA County Off-Ramps;
- ix. DSH Re-evaluation Services – found competent;

x. DSHRe-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delay of Critical Records;
- ii. Medical Circumstances;
- iii. Out of Custody;
- iv. Pending Court Hearings and Proceedings;
- v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

**RESPONSE: The Department has located documents responsive to your request listed in the chart below. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:**

#	DOCUMENT NAME	DATE	PAGE COUNT
1)	External.July2023 Status Update_V5	July, 2023	10
<b>TOTAL PAGES</b>			<b>10</b>

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant

d. was admitted to a state hospital);

**RESPONSE: The Department has located documents responsive to your request listed in the chart below. Please find the following responsive records under the PRA and all applicable laws that are disclosable available in the online GovQA portal:**

#	DOCUMENT NAME	DATE	PAGE COUNT
1)	EXTERNAL.October 2022 DSH Stiavetti Report_FinalV8	October, 2022	16
2)	EXTERNAL.April 2023 DSH Stiavetti Report2_V7	April, 2023	13

3)	EXTERNAL.July2023 Status Update_V5	July, 2023	10
TOTAL PAGES			39

4. Court orders:Any court orders in DSH’s possession, dated from June 2023 to September 1,2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

**RESPONSE:** DSH had previously met and conferred with the requestor regarding the responsive records for request #4. On October 16, 2023, DSH met with requestors and informed them that records such as those sought in request #4 contained confidential information which could not be released and that any records provided to requestor would be heavily redacted and contain no value. Requestor emailed DSH on approximately October 24, 2023, and asked for a sampling of records responsive to request #4, said sampling of records were provided to requestor in an email on the same day. DSH awaits requestors response on whether or not withdraw request #4 from this PRA.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

✉ On 11/3/2023 9:02:18 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

November 3, 2023

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:

- i. Date of arrest;
- ii. Offense charged;
- iii. Date of commitment to DSH;
- iv. Date of death;

v. Cause and manner of death, and;

vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

i. Early Access and Stabilization Services (“EASS”);

ii. Department of State Hospitals Inpatient Programs;

iii. Jail Based Competency Programs;

iv. Community Based Health Facilities;

v. Diversion;

vi. Community Based Restoration;

vii. Conditional Release Program;

viii. LA County Off-Ramps;

ix. DSH Re-evaluation Services – found competent;

x. DSH Re-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

i. Delay of Critical Records;

ii. Medical Circumstances;

iii. Out of Custody;

iv. Pending Court Hearings and Proceedings;

v. Transportation Related.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33



days, 34-45 days, 46-60 days, 61-90days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admitted to State Hospital;
- ii. Admitted to a Jail Based Competency Program;
- iii. Admitted to a Community Based In-patient Program;
- iv. Admitted into Diversion;
- v. LA County Off-Ramp;
- vi. Found Competent;
- vii. Found Unlikely to Restore, and;
- viii. Pending Placement

b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and

c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant

d. was admitted to a state hospital);

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Pursuant to Government Code section 7922.535, subdivision (b), the Department is

extending the time in which to issue a determination of whether or not your request seeks copies of disclosable records in the possession of the Department. Additional time is needed to search for and collect any requested records that may be responsive to your request because separate offices are involved (Gov. Code, §7922.535, subd. (c)(1)) and a voluminous amount of records must be examined (Gov. Code, § 7922.535, subd. (c)(2)). The Department reserves the right to assert any exemptions from the PRA.

A determination will be made within 14 days from the date of this message. You will receive an e-mail notification of the determination and, if applicable, the date and time the records will be available. Additionally, there is a \$0.10 per page copy cost for any available records mailed to you.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

 On 10/20/2023 8:28:09 AM, CALIFORNIA DSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

October 20, 2023

Sent by [GovQA](#)

EmiMacLean

[hamirali@aclunc.org](mailto:hamirali@aclunc.org)

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:

- i. Date of arrest;
- ii. Offense charged;
- iii. Date of commitment to DSH;
- iv. Date of death;
- v. Cause and manner of death, and;
- vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

- i. Early Access and Stabilization Services (“EASS”);
- ii. Department of State Hospitals Inpatient Programs;
- iii. Jail Based Competency Programs;
- iv. Community Based Health Facilities;
- v. Diversion;

- vi. CommunityBased Restoration;
- vii. ConditionalRelease Program;
- viii. LACounty Off-Ramps;
- ix. DSHRe-evaluation Services – found competent;
- x. DSHRe-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delayof Critical Records;
- ii. MedicalCircumstances;
- iii. Out ofCustody;
- iv. PendingCourt Hearings and Proceedings;
- v. TransportationRelated.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admittedto State Hospital;
- ii. Admittedto a Jail Based Competency Program;
- iii. Admittedto a Community Based In-patient Program;
- iv. Admittedinto Diversion;
- v. LACounty Off-Ramp;
- vi. FoundCompetent;
- vii. FoundUnlikely to Restore, and;

viii. Pending Placement

- b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and
  - c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant
  - d. was admitted to a state hospital);
4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:
- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
  - b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
  - c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Pursuant to Government Code section 7922.535, subdivision (b), the Department is extending the time in which to issue a determination of whether or not your request seeks copies of disclosable records in the possession of the Department. Additional time is needed to search for and collect any requested records that may be responsive to your request because separate offices are involved (Gov. Code, §7922.535, subd. (c)(1)) and a voluminous amount of records must be examined (Gov. Code, § 7922.535, subd. (c)(2)). The Department reserves the right to assert any exemptions from the PRA.

A determination will be made within 14 days from the date of this message. You will receive an e-mail notification of the determination and, if applicable, the date and time the records will be available. Additionally, there is a \$0.10 per page photocopy cost for any available records mailed to you.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

✉ On 10/6/2023 8:24:20 AM, CALIFORNIADSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

October 6, 2023

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

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  - ii. Offense charged;
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- iv. Date of death;
- v. Cause and manner of death, and;
- vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:

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b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

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- iv. Admitted into Diversion;
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- vi. Found Competent;
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Sincerely,

Records Coordination Unit

For BRENT W. REDEN

Deputy Director/Chief Counsel

 On 9/22/2023 9:32:21 AM, CALIFORNIA DSH Support wrote:

**Subject:** [Records Center] Public Records Act Request :: R230262-091423

**Body:**

September 22, 2023

Sent by GovQA

EmiMacLean

hamirali@aclunc.org

RE:Public Records Act Request Number R230262

Dear Emi MacLean:

On September 14, 2023, the Department of State Hospitals received your Public Records Act (PRA) Request for:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:

- a. The number of individuals who were removed from the IST waitlist due to death; and
- b. Data or other information about people who died after having been deemed IST:
  - i. Date of arrest;
  - ii. Offense charged;
  - iii. Date of commitment to DSH;
  - iv. Date of death;
  - v. Cause and manner of death, and;
  - vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:
  - i. Early Access and Stabilization Services (“EASS”);
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  - iii. Jail Based Competency Programs;
  - iv. Community Based Health Facilities;

- v. Diversion;
- vi. CommunityBased Restoration;
- vii. ConditionalRelease Program;
- viii. LACounty Off-Ramps;
- ix. DSHRe-evaluation Services – found competent;
- x. DSHRe-evaluation Services – unlikely to restore.

b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

c. Total number of admissions delayed due to the following reasons:

- i. Delayof Critical Records;
- ii. MedicalCircumstances;
- iii. Out ofCustody;
- iv. PendingCourt Hearings and Proceedings;
- v. TransportationRelated.

d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

a. The number of participants with the following outcomes:

- i. Admittedto State Hospital;
- ii. Admittedto a Jail Based Competency Program;
- iii. Admittedto a Community Based In-patient Program;
- iv. Admittedinto Diversion;
- v. LA CountyOff-Ramp;

- vi. FoundCompetent;
- vii. FoundUnlikely to Restore, and;
- viii. PendingPlacement

- b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and
- c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant
- d. was admitted to a state hospital);

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

- a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;
- c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Pursuant to Government Code section 7922.535, subdivision (b), the Department is extending the time in which to issue a determination of whether or not your request seeks copies of disclosable records in the possession of the Department. Additional time is needed to search for and collect any requested records that may be responsive to your request because separate offices are involved (Gov. Code, § 7922.535, subd. (c)(1)) and a voluminous amount of records must be examined (Gov. Code, § 7922.535, subd. (c)(2)). The Department reserves the right to assert any exemptions from the PRA.

A determination will be made within 14 days from the date of this message. You will receive an e-mail notification of the determination and, if applicable, the date and time the records will be available. Additionally, there is a \$0.10 per page photocopy cost for any available records mailed to you.

Sincerely,

Records Coordination Unit

For BRENT W. REDEN

DeputyDirector/Chief Counsel

✉ On 9/14/2023 4:16:31 PM, CALIFORNIADSH Support wrote:

Dear Emi MacLean:

Thank you for your interest in public records of California Department of State Hospitals. Your request has been received and is being processed. Your request was received in this office on 9/14/2023 and given the reference number R230262-091423 for tracking purposes.

Records Requested: September 14, 2023

California Department of State Hospitals  
ATTN: Public Records Act Coordinator  
1215 O Street, MS-5  
Sacramento, CA 95814

VIA DSH PRA PORTAL

RE: PUBLIC RECORDS ACT REQUEST

DSH Public Records Act Coordinator:

On behalf of the American Civil Liberties Union of Northern California, I am writing to request records pursuant to the California Public Records Act and the California Constitution, art. I, § 3(b)(2). I am requesting records related to the Department of State Hospital's ("DSH") Incompetent to Stand Trial ("IST") waitlist and DSH's provision of restoration services to IST patients. This request seeks records concerning 1) the deaths of individuals deemed IST over the past five years; 2) information to substantiate and explain the outcomes, and wait times for programming or treatment, for individuals deemed IST; 3) information concerning the outcomes of participants in Early Access and Stabilization Services ("EASS"); and 4) commitment orders and orders to show cause provided by Superior Courts across the state. I am requesting these records in the public interest given the systemic constitutional violations and significant human and financial costs of the prolonged delays of access to competency restoration treatment for people deemed IST.

The specific records I request are:

1. Information about deaths of individuals deemed IST but not admitted to treatment: All documents and data related to individuals who were removed from the IST waitlist due to death, from January 2018 to present, including but not limited to records with information about:
  - a. The number of individuals who were removed from the IST waitlist due to death; and
  - b. Data or other information about people who died after having been deemed IST:
    - i. Date of arrest;
    - ii. Offense charged;

- iii. Date of commitment to DSH;
- iv. Date of death;
- v. Cause and manner of death, and;
- vi. County of referral.

2. Documents and/or data sufficient to show and/or permit the calculation of the following information:

- a. Total number of new participants admitted to the following programs between March 1, 2023 and May 31, 2023 and between June 1, 2023 and August 31, 2023:
  - i. Early Access and Stabilization Services (“EASS”);
  - ii. Department of State Hospitals Inpatient Programs;
  - iii. Jail Based Competency Programs;
  - iv. Community Based Health Facilities;
  - v. Diversion;
  - vi. Community Based Restoration;
  - vii. Conditional Release Program;
  - viii. LA County Off-Ramps;
  - ix. DSH Re-evaluation Services – found competent;
  - x. DSH Re-evaluation Services – unlikely to restore.
- b. The number of new participants admitted to each of the programs listed in 2.a.i. through 2.a.x. (above) within the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.
- c. Total number of admissions delayed due to the following reasons:
  - i. Delay of Critical Records;
  - ii. Medical Circumstances;
  - iii. Out of Custody;
  - iv. Pending Court Hearings and Proceedings;
  - v. Transportation Related.
- d. For the categories of delayed admissions listed in 2.c.i. through 2.c.v. (above), the number of individuals whose admissions were delayed for the following time periods: 0-28 days, 29-33 days, 34-45 days, 46-60 days, 61-90 days, 91-120 days, 121-150 days, 151-180 days, 181-210 days, 211+ days.

3. Information about the outcomes of EASS participants: For participants admitted into the EASS program between January 1, 2022 and the present, data and/or documents sufficient to show:

- a. The number of participants with the following outcomes:
  - i. Admitted to State Hospital;
  - ii. Admitted to a Jail Based Competency Program;
  - iii. Admitted to a Community Based In-patient Program;
  - iv. Admitted into Diversion;
  - v. LA County Off-Ramp;
  - vi. Found Competent;
  - vii. Found Unlikely to Restore, and;
  - viii. Pending Placement
- b. The duration of time after IST commitment which participants received the following outcomes (e.g., time after IST commitment when an EASS participant was admitted to a state hospital); and
- c. The duration of time after EASS enrollment which participants received the following outcomes (e.g., time after EASS enrollment when an EASS participant

d. was admitted to a state hospital);

4. Court orders: Any court orders in DSH's possession, dated from June 2023 to September 1, 2023:

a. Ordering DSH to show cause for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

b. Ordering sanctions against DSH for failing to admit, or provide competency restoration treatment, to individuals deemed IST in a timely manner;

c. Ordering individuals deemed IST committed to DSH custody for competency restoration treatment.

Government Code § 7922.600(a) requires that you assist in the making of a focused and effective request that reasonably describes an identifiable record or records by (1) providing assistance in identifying responsive records and information; (2) describing the information technology and physical location in which the records exist; and (3) providing suggestions to overcome any practical basis that you assert as a reason to delay or deny access to the records or information sought.

If you claim that portions of any responsive records are exempt from disclosure, the PRA requires that you provide the basis for the exemption and that you also segregate and redact such information so that the remainder of the responsive records may be disclosed. For example, if you contend that the data contained in any report are exempt from disclosure, please provide the remainder of the record so that we can see what types of data are being reported. If you believe that the data is not reasonably segregable, we request your assistance in identifying responsive records and information and describing that information pursuant to Government Code § 7922.600(a). If any of the requested information is unavailable because of privacy or other limitations, please provide the maximum available responsive information.

Pursuant to Government Code § 7922.535(a), you are required to respond to this request within 10 days. Please include the estimated date that you will make records available. If you have questions regarding the scope of the request or anticipate that the time needed will exceed 10 days, please contact me at [emaclean@aclunc.org](mailto:emaclean@aclunc.org). Please send all documents as soon as possible and on a rolling basis if necessary.

Thank you in advance for your compliance with this request.

Sincerely,

Emi MacLean  
Senior Staff Attorney  
ACLU Foundation of Northern California

Your request will be forwarded to the relevant department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. PLEASE NOTE: The California Public Records Act does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you'll receive an email when your request

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has been completed. Again, thank you for using the Public Records Center.

California Department of State Hospitals

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To monitor the progress or update this request please log into the [Public Records Center](#).

 On 9/14/2023 4:16:30 PM, Emi MacLean wrote:

Request Created on Public Portal



## Emilia Garcia

---

**From:** Emilia Garcia  
**Sent:** Tuesday, October 17, 2023 1:13 PM  
**To:** Kristopher.Kent@dsh.ca.gov; Jonathan.Tan@dsh.ca.gov; Rezvanpoor, Niloofar@DSH-S; Emi MacLean  
**Subject:** PRA R230262-091423, communication regarding production of responsive documents.

Dear Mr. Kent, Ms. Rezvanpoor, and Mr. Tan,

Thank you for your communication yesterday, October 16, 2023, regarding Request No. R230262-091423. You identified that you have completed review of requests 1, 2, and 3 and anticipate prompt production of any responsive nonexempt records shortly. You also identified that you will provide a formal response to those requests, to the extent that the agency will not produce responsive records, as well as to request 4 (seeking specific court records).

In light of the fact that the agency asserts that it must heavily redact responsive court records, in response to request 4, we request a sample of the redacted records rather than rolling production, along with an explanation of the agency's justification for any redactions. We believe it most fruitful and efficient to resolve any concerns about the propriety of the redactions prior to any rolling production of redacted responsive records. Therefore, in lieu of a rolling response, we request that you kindly produce a sample of the three most recent court orders in DSH's possession for each of the following subcategories identified in our request 4: a) Orders to show cause for failing to admit or provide competency restoration treatment to individuals deemed IST in a timely manner; b) Orders for sanctions against DSH for failing to admit or provide competency restoration treatment to individuals deemed IST in a timely manner, and; c) Orders committing individuals deemed IST to DSH custody for competency restoration treatment.

Thank you in advance,

Emilia Garcia



Emilia Garcia | she/her/hers  
Investigator  
ACLU of Northern California  
916.824.3258 | [emgarcia@aclunc.org](mailto:emgarcia@aclunc.org)

# securereader.inbox.title

 [securemail.dsh.ca.gov/securereader/inbox.jsf](https://securemail.dsh.ca.gov/securereader/inbox.jsf)

Digital Signature is VALID 










## PRA R230262 - Request #4 Sampling

From: Tan, Jonathan@DSH-S

To: emaclean@aclunc.org, emgarcia@aclunc.org

Cc: Kent, Kristopher@DSH-S

Sent: 10/24/2023 10:27:28 AM

Attachments:  [DSH PD 6300.pdf](#)  [DSH PD 6300\\_att1.pdf](#)  [DSH PC 6300\\_att2.pdf](#)  [Commitment Order Sample 1\\_Redacted.pdf](#)  [Commitment Order Sample 2\\_Redacted.pdf](#)  [Order Issuing Sanctions Sample 1\\_Redacted.pdf](#)  [Order Issuing Sanctions Sample 2\\_Redacted.pdf](#)  [OSC Order Sample 1\\_Redacted.pdf](#)  [OSC Order Sample 2\\_Redacted.pdf](#)

Ms. MacLean, Ms. Garcia,

Attached to this email, please find a sampling of the court orders requested in PRA 230262, request # 4.

In regard to DSH's privacy limitations, please understand that the department must comply with Health Insurance Portability and Accountability Act (HIPAA), the Information Practices Act (IPA) (Civ. Code, § 1798, et. Seq.), and the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5328, et. Seq.). In an effort to balance the need for transparency and the need to protect patient privacy, DSH utilizes a series of policies and procedures to comply with the data de-identification requirements set forth in HIPAA and the IPA when releasing patient-level data to the public. (See attached PD 6300, and the Data De-Identification Guidelines (DDG).)

As such, the redactions in the attached sample of de-identified records were made pursuant to the Safe Harbor requirements under HIPAA and the IPA, specifically 45 CFR 164.514 and Civil Code section 1798.3, subdivision (a). The alternative method, permitted under HIPAA, for an "expert determination" (referred to as the "risk assessment method" in the DDG) would not change the outcome for patient-level data such as these commitment orders because it would involve removing the uniqueness of the data as well as any personally identifiable information/quasi-identifiers described in 45 CFR 164.514, and Civil Code section 1798.3, subdivision (a). The sample orders provided comport with these data deidentification requirements and fulfill the department's privacy obligations.

Thank you.

Jonathan Tan

Attorney III

Legal Division – Southern California Office

Department of State Hospitals

11401 Bloomfield Avenue, Cottage 1

Norwalk, CA 90650

(916) 352-6783 – office

(916) 217-9798 - cell

[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)

-



**CONFIDENTIALITY NOTICE:** This communication with its contents may contain confidential and/or legally privileged information. DO NOT DISCLOSE THIS EMAIL TO OTHERS. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

<b>NUMBER</b>	PD 6300
<b>TITLE</b>	Data De-Identification and Redaction of Confidential Patient Information
<b>EFFECTIVE DATE</b>	February 27, 2020
<b>SUPERSEDES</b>	NEW

**Policy Statement**

The Department of State Hospitals’ (DSH) Policy Directives (PDs) provide guidance to comply with laws, regulations, codes, etc. PDs are issued and signed by the Director. Health information that identifies or can reasonably be used to identify a patient shall not be disclosed unless the disclosure complies with Federal and State laws or unless the health information has been appropriately de-identified.

**Purpose**

The purpose of this PD is to provide guidance to ensure compliance with Federal and State privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA), the Information Practices Act (IPA), and the Lanterman-Petris-Short Act (LPS), when releasing records that contain health information that identifies or can reasonably be used to identify a patient. There is no use or disclosure of such information unless permitted under Federal and State law.

**Responsibility**

**Executive Sponsor:** Deputy Director, Hospital Strategic Planning and Implementation Division

**Process Owners:** Research, Evaluations, and Data Section

**Background**

DSH receives, manages, and disseminates a wide range of data regarding patients who are committed to DSH pursuant to statutory requirements; DSH participates in an open-data strategy to report publicly on its performance as a Department.

DSH is committed to maintaining privacy and information security. All protected health information and personally identifiable information is protected by various privacy laws, which DSH is committed to complying with.

Confidential patient information will be maintained; de-identified data will be provided to disclose information about patients served. Transparency of information for the public will be achieved while maintaining compliance with State and Federal patient privacy law.

## Authority

Welfare and Institutions Code sections 4005.1 and 4101.

## Definitions

**Health Information or Confidential Patient Information:** For this PD, all information and records obtained while providing services at a DSH facility to either voluntary or involuntary recipients of services.

**Patient-Level Data:** For this PD, information that is patient-specific separately recorded within DSH systems, documents maintained outside of DSH systems, health records, or criminal records.

## Process

### I. General Rule

- A. When there is no use or disclosure permitted under state or federal law, DSH may use and disclose health information once it has been appropriately de-identified so that it is no longer individually identifiable health information using one of the methods set forth in this PD.
- B. The official Data De-Identification Guidelines (DDG) setting forth the de-identification principles and methods for DSH shall be the California Health and Human Services' (CHHS) DDG (Attachment 1), along with the DSH Redaction Matrix (Attachment 2).
  1. DSH staff members may seek further guidance of generally accepted statistical and scientific principles and methods from other sources to supplement what is provided in the DDG, including the following:
    - a) The Statistical Policy Working Paper 22 - Report on Statistical Disclosure Limitation Methodology originally prepared by the Subcommittee on Disclosure Limitation Methodology, Federal Committee on Statistical Methodology, Office of Management and Budget.
    - b) The Checklist on Disclosure Potential of Proposed Data Releases prepared by the Confidentiality and Data Access Committee, Federal Committee on Statistical Methodology, Office of Management and Budget

## II. Safe Harbor

- A. To de-identify health information, DSH must remove all the following identifiers of the patient or their relatives, employers, or household members:
1. Names, including initials, of the patients associated with the corresponding health information (i.e., the subjects of the records) and of their relatives, employers, and household members must be suppressed. There is no explicit requirement to remove the names of providers or workforce members of the covered entity or business associate;
  2. All geographic subdivisions smaller than a state;
  3. All elements of dates (except year) directly related to a patient;
  4. Telephone and Fax numbers;
  5. Electronic mail addresses;
  6. Social Security Numbers;
  7. Medical record numbers;
  8. Health plan beneficiary numbers;
  9. Account numbers;
  10. Certificate or license numbers;
  11. Vehicle identifiers and serial numbers, including license plate numbers;
  12. Device identifiers and serial numbers;
  13. Web Universal Resource Locators (URLs);
  14. Internet Protocol (IP) address numbers;
  15. Biometric identifiers, including finger and voice prints;
  16. Full-face photographic images and any comparable images; and
  17. Any other unique identifying number, characteristic, or code, except as permitted by HIPAA.
- B. DSH may not release information if it knows that the information can be used alone or in combination with other information available to the intended recipient of the information to identify a patient.

## III. Expert Determination

- A. When data de-identification under the Safe Harbor provisions is not a viable option, DSH may determine that health information is no longer individually identifiable when a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:
1. Determines after applying principles and methods that there is minimal risk the information could be used, alone or in combination with other reasonably available information, by a recipient to identify a patient; and
  2. Documents the methods and results of the analysis that justifies or supports the determination.

- B. The Research, Evaluation, and Data Team (RED) shall receive and assess requests for aggregate data that do not meet Safe Harbor provisions and provide the expert determination recommendation based on the DDG.
  - 1. RED's recommendation shall be reviewed and approved by the Privacy Officer or designee prior to publication.

#### **IV. Redactions**

- A. When providing patient-level data, DSH shall redact all identifiable patient information as provided in the DDG and pursuant to the guidance provided in the DSH Redaction Matrix.
- B. Patient-level data shall be assessed both for uniqueness of the records and for the possibility that the data can be used in conjunction with other information available to the requester to identify individuals in the data.
- C. Patient-level data inherently has higher risk than summarized data, even after personal identifiers are removed; therefore, patient-level data for public release shall be addressed on a case-by-case basis.
- D. In the event the document contains input from and/or communications with the Legal Division, refer the document to the Legal Division for determination as to whether redaction of attorney-client privileged information or attorney work product is warranted.

#### **V. Re-identification of Information**

- A. When DSH believes it may need to re-identify information that is being de-identified, DSH may assign a code or other means of record identification to allow information to be re-identified, if:
  - 1. The code or other means of record identification is not derived from or related to information about the patient and is not otherwise capable of being translated to identify the patient (such as when a derivative of the patient's name is used as the unique record identifier).
  - 2. DSH does not use or disclose the code or other means of record identification for any other purpose and does not disclose the mechanism for re-identification.
- B. Generally, a code or other means of record identification that is derived from health information would have to be removed from data de-identified following the "safe harbor" method.

## Roles and Responsibilities

**Health Information Management Staff** are responsible for receiving, reviewing, validating, processing, and releasing DSH patient healthcare records in accordance with this PD and with Federal and State laws.

**The Privacy Officer** is responsible for providing guidance to DSH employees to ensure that data provided for public release meets the requirements of Federal and State privacy laws, including but not limited to, HIPAA, LPS, and IPA, to prevent the unauthorized disclosure of confidential patient information. The Privacy Officer is also responsible to ensure that statutory and regulatory reporting occurs and corrective measures are taken in the event a violation of this PD or of Federal or State privacy laws.

**The Information Security Officer** is responsible for ensuring the security and confidentiality of enterprise data is maintained and accessed appropriately.

**The Data Governance Committee** is responsible for governing processes related to data de-identification to inform organizational protocols.

**The Patient Management Unit** is involved in the secure transfer of patient records throughout the pre-admission process.

**The Data Management Office** is responsible for providing patient-level data from DSH data systems per requirements to fulfill requests from program business entities such as the RED Team. CHHS data de-identification will be evaluated by such program business entities.

**The Research, Evaluations, and Data Unit** is responsible for reviewing data tables and displays to assess publications in accordance with CHHS data de-identification guidelines.

**The Clinical Operations Advisory Council (COAC) Data Team** is responsible for making improvements to the quality of clinical care and therapeutic services DSH provides to our patients.

**DSH Legal Division** is responsible for assessing the data to be released for risk to the Department and for potential implications on litigation; statutory or regulatory conditions on data release; and other legal considerations that may impact release.



## Approval

*Original signed by Director*

*February 27, 2020*

\_\_\_\_\_  
STEPHANIE CLENDENIN  
Director

\_\_\_\_\_  
Date

## References

- A. Welfare and Institutions Code section 5328, et seq (Lanterman-Petris-Short Act)
- B. Civil Code sections 1798, et seq (Information Practices Act)
- C. Health and Safety Code section 130303
- D. 45 Code of Federal Regulations sections 164.514(a)-(c), and 164.530(i)(1) (HIPAA)
- E. United States Health and Human Services Agency [Statistical Policy Working Paper 22 \(Second version, 2005\) Report on Statistical Disclosure Limitation Methodology](https://www.hhs.gov/sites/default/files/spwp22.pdf) <https://www.hhs.gov/sites/default/files/spwp22.pdf>
- F. The Federal Committee on Statistical Methodology [Checklist on Disclosure Potential of Proposed Data Releases \(July 1999\)](https://nces.ed.gov/FCSM/cdac_resources.asp). ([https://nces.ed.gov/FCSM/cdac\\_resources.asp](https://nces.ed.gov/FCSM/cdac_resources.asp))
- G. California Department of Health and Human Services [Data De-Identification Guidelines \(September 23, 2016\)](#)

## Attachments

- 1. CHHS DDG
- 2. DSH Redaction Matrix

# **Data De-Identification Guidelines (DDG)**

**California Health and Human Services**

**September 23, 2016**

Version 1.0

## Revision History

Version	Date	Author	Brief Description of Changes
0.1	5/26/15	L. Scott	Initial draft for review which was based on the DHCS PAR-DBR Guidelines dated 8/25/14 and conversations at the CHHS Data De-identification Workgroup meetings.
0.2	6/29/15	L. Scott	Additions made based on feedback: <ul style="list-style-type: none"> <li>• CHHS Data De-identification Workgroup meetings on May 27, 2015 and June 8, 2015</li> <li>• Department specific meetings</li> </ul>
0.3	8/5/15	L. Scott	Additions and changes based on feedback from all departments with specific written comments from CDPH, OSHPD, DCSS, CDSS, MHSOAC.
0.4	1/22/16	L. Scott	Revisions based on recommendations from: <ul style="list-style-type: none"> <li>• NORC</li> <li>• CHHS DDG Workgroup</li> <li>• CHHS Risk Management Subcommittee and associated Legal and Privacy Workgroup</li> <li>• Specific written comments from CDPH, CDSS</li> </ul>
0.5	3/18/16	L. Scott	Revisions based on comments from CDPH, CDSS, OSHPD, DHCS.
0.6	4/4/16	L. Scott	Revisions based on feedback from and discussion with the Data Subcommittee
0.7	5/3/16	L. Scott	Revisions based on feedback from and discussion with the Data Subcommittee
0.8	6/17/16	L. Scott	Revisions based on direction from the CHHS Governance Advisory Council and input from the CHHS Risk Management Committee
0.9	7/5/16	P. Cervinka	Revisions based on clarification from the CHHS Governance Advisory Council
0.10	7/11/16	L. Scott	Formatting and citations edits to be consistent with previous version 0.8
1.0	9/23/16	L. Scott	Revisions based on direction from the CHHS Undersecretary. Approved as Version 1.0 for implementation.

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## 1) Purpose

The California Health and Human Services Agency (CHHS) Data De-identification Guidelines (DDG) describes a procedure to be used by departments and offices in the CHHS to assess data for public release. As part of the document, specific actions that may be taken for each step in the procedure are described. These steps are intended to assist departments in assuring that data is de-identified for purposes of public release that meet the requirements of the California Information Practices Act<sup>1</sup> (IPA) and the Health Insurance Portability and Accountability Act<sup>2</sup> (HIPAA) to prevent the disclosure of personal information.

Additionally, the DDG support CHHS governance goals to reduce inconsistency of practices across departments, align standards used across departments, facilitate the release of useful data to the public, promote transparency of state government, and support other CHHS initiatives, such as the CHHS Open Data Portal.

## 2) Background

CHHS implemented an agency-wide governance structure in October, 2014. The governance structure acts both in a decision-making and advisory capacity to Agency leadership and its departments and offices. Implementation of the governance framework supports information technology (IT) initiatives that are more tightly aligned with meeting business objectives, enhanced project prioritization and improved strategic IT investment decisions. The Executive Sponsor is the Undersecretary of CHHS. The Advisory Council consists of representatives of senior leadership from departments and offices in the Agency. There are five subcommittees that report to the Advisory Council, which include the Portfolio, Procurement, Infrastructure, Risk Management and Data Subcommittees. The Data De-identification Workgroup was convened by the Data Subcommittee with representation from all departments and offices in CHHS.

CHHS is engaged in improving transparency and public reporting through the Open Data Portal. As described in the CHHS Open Data Portal Handbook, not all data is suitable for use on the open data portal. Data is Publishable State Data if it meets one of the following criteria: (1) data that are public by law such as via the Public Records Act<sup>3</sup> (PRA) or (2) the data are not prohibited from being released by any laws, regulations, policies, rules, rights, court order, or any other restriction. Data shall not be

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<sup>1</sup> Civ. Code § 1789 et seq.

<sup>2</sup> HIPAA Privacy Rule is located at 45 CFR Part 160 and Subparts A and E of Part 164

<sup>3</sup> Gov. Code 6250 et seq.

released if it is restricted due to the HIPAA, state or federal law. Data tables may fall into one of three categories:<sup>4</sup>

- Level One: Data tables that can be released to the public and published without restriction;
- Level Two: Data tables that have some level of restriction or sensitivity but currently can be made available to interested parties with a signed data use agreement; or
- Level Three: Level three data are restricted due to HIPAA, state or federal law. These data will NOT be accessible through the CHHS Open Data Portal.

Data can change from being Level 3 to Level 1 if appropriate de-identification processes are employed. The CHHS DDG described in this document will support departments and offices in the evaluation of data to determine whether it has been adequately de-identified so that it can be considered Level 1.

### 3) Scope

Data de-identification practices will be implemented by each department and office (further referred to as department) in the agency. This DDG is the default policy for CHHS departments. If a CHHS department wants to create a department DDG, it must have appropriate references to departmental processes and the department must file a copy of their DDG with the Office of the Agency Information Officer (OAIO). For example, the Legal Review process and the Departmental Release Procedures for De-Identified Data require additional information to describe these steps within each department. Additionally, a department with programs not covered by HIPAA will not require specific HIPAA references. A department must request DDG consultation from the CHHS peer review team (PRT), described in Section 8: DDG Governance prior to implementation. The PRT is available to review the department's documentation to ensure it is consistent with the principles of the CHHS DDG and meets requirements of the California IPA.

The CHHS DDG is focused on the assessment of aggregate or summary data for purposes of de-identification and public release. Aggregate data means collective data that relates to a group or category of services or individuals. The aggregate data may be shown in table form as counts, percentages, rates, averages, or other statistical groupings.

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<sup>4</sup> CHHS' Open Data Portal Handbook, Version 2.1, October 2014, Data Levels Decision Tree, pages 91 and 92.

Departments are sometimes asked to release record level data. Record level data refers to information that is specific to a person or entity. For example, a record for Jane Doe may include demographics and case information specific to Jane Doe. However, summary data would include information from Jane Doe combined, or summarized, with data from other individuals. If record level data is to be publicly released, it must be assessed to ensure it is de-identified and does not include Personal Information (PI)<sup>5</sup> or Protected Health Information (PHI).<sup>6</sup> Although the DDG is focused on summarized data, it can be used to assist with review of individual or record level data. The record level data should be assessed both for uniqueness of the records and for the possibility that the data can be used in conjunction with other information available to the requester to identify individuals in the data. Record level data inherently has higher risk than summarized data, even after personal identifiers are removed. Therefore, record level data for public release should be assessed on a case by case basis.

CHHS collects, manages and disseminates a wide range of data. The focus for the DDG is on data that includes personal characteristics of individuals who have a legal right to privacy. Personal characteristics include but are not limited to age, race, sex, and residence and other identifiers specified in the IPA and HIPAA and listed in Figure 1. These guidelines will focus on the assessment of personal characteristics that are included in various data sets or tables to assess risk for identification of the individuals to which they pertain.

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<sup>5</sup> Personal Information is defined by California Civil Code section 1798.3 and Government Code section 11015.5.

<sup>6</sup> "PHI" is defined as information which relates to the individual's past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual, or for which there is a reasonable basis to believe can be used to identify the individual. (45 CFR section 160.103)



**Figure 1: Unique Identifiers**

CA – Personal Information	HIPAA – Safe Harbor (PHI)
<p>Any information that identifies or describes an individual, including but not limited to:<sup>7</sup></p>	<ul style="list-style-type: none"> <li>• Names</li> <li>• All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP code, and their equivalent geocodes, except for the initial three digits of the ZIP code if, according to the current publicly available data from the Bureau of the Census:               <ul style="list-style-type: none"> <li>– The geographic unit formed by combining all ZIP codes with the same three initial digits contains more than 20,000 people; and</li> <li>– The initial three digits of a ZIP code for all such geographic units containing 20,000 or fewer people is changed to 000</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Name</li> <li>• Social security number</li> <li>• Physical description</li> <li>• Home address</li> <li>• Home telephone number</li> <li>• Education</li> <li>• Financial matters</li> <li>• Medical history</li> <li>• Employment history</li> </ul>	<ul style="list-style-type: none"> <li>• All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older</li> </ul>
<p>Electronically collected personal information:<sup>8</sup></p> <ul style="list-style-type: none"> <li>• his or her name</li> <li>• social security number</li> <li>• physical description</li> <li>• home address</li> <li>• home telephone number</li> <li>• education</li> <li>• financial matters</li> <li>• medical or employment history</li> <li>• password</li> <li>• electronic mail address</li> <li>• information that reveals any network location or identity</li> </ul>	<ul style="list-style-type: none"> <li>• Telephone numbers</li> <li>• Fax numbers</li> <li>• Email addresses</li> <li>• Social security numbers</li> <li>• Medical record numbers</li> <li>• Health plan beneficiary numbers</li> <li>• Account numbers</li> <li>• Certificate/license numbers</li> <li>• Vehicle identifiers and serial numbers, including license plate numbers</li> </ul>
<p>Excludes information relating to individuals who are users serving in a business capacity, including, but not limited to, business owners, officers, or principals of that business.</p>	<ul style="list-style-type: none"> <li>• Device identifiers and serial numbers</li> <li>• Web Universal Resource Locators (URLs)</li> <li>• Internet Protocol (IP) addresses</li> <li>• Biometric identifiers, including finger and voice prints</li> <li>• Full-face photographs and any comparable images</li> <li>• Any other unique identifying number, characteristic, or code</li> </ul>

<sup>7</sup> California Civil Code 1798.3 (a)

<sup>8</sup> California Government Code 11015.5 (d) (1)

Assessing the risk of an unauthorized disclosure that violates an individual's right to privacy and/or confidentiality, as provided by statute, may be achieved by associating personal characteristics with a person's identity or attributes. When these characteristics can successfully confirm an individual's identity in a publicly released data set, then release of this data results in disclosure of personal information.

Less obvious qualities in data sets and elements that may be used to identify individuals or groups can present uniqueness in data. Individual uniqueness in the released data and in the population is a quality that helps distinguish one person from another and is directly related to re-identification of individuals in aggregate data. Disclosure risk becomes a concern when released data reveal characteristics that are unique in both the released data and in the underlying population. The risk of re-identifying an individual or group of individuals increases when unique or rare characteristics are "highly visible", or are readily accessible by the general public without any special or privileged knowledge. Unique or rare personal characteristics (e.g., height above 7 feet) or information that isolate individuals to small demographic subgroups (e.g., American Indian Tribal membership) increase the likelihood that someone can correctly attribute information in the released data to an individual or group of individuals.<sup>9</sup>

### **Assessment of variables and their uniqueness**

There are a number of variables that are unique to individuals that have been identified in various laws and are considered identifiers (PI/PHI). There are two primary laws that describe identifiers, shown in Figure 1, in California: the IPA and the federal HIPAA. Other variables that are commonly used to publish information to the public have been called quasi-identifiers because while they are not unique by themselves, they can become unique in the right combination. The variables shown in the Publication Scoring Criteria in Figure 6 can be considered quasi-identifiers and will be discussed further in Sections 4 and 6.

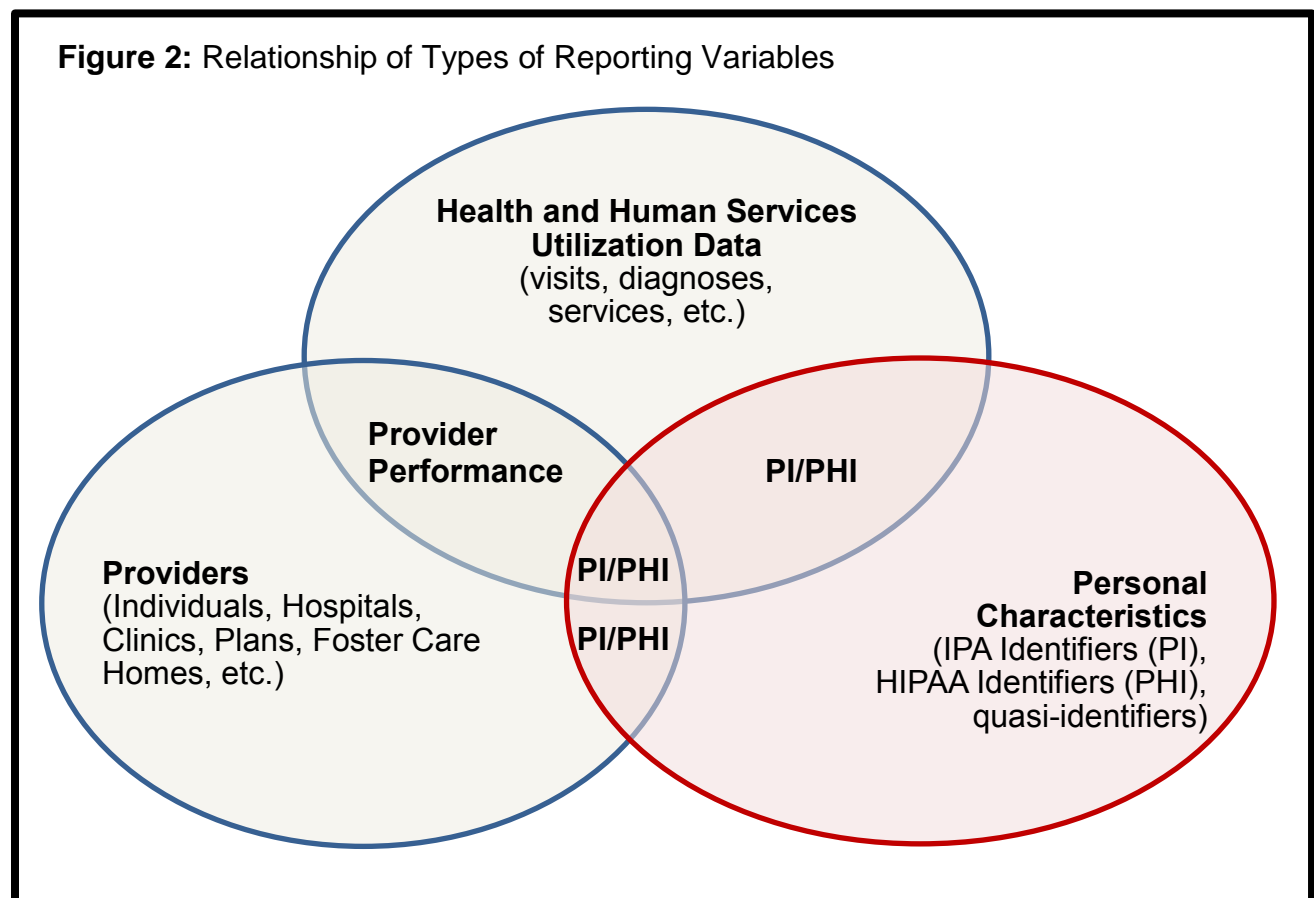
### **Assessment of risk in the context of maximizing the usefulness of the information presented**

The removal of PI and PHI from datasets is often considered straight-forward, because as soon as data is aggregated or summarized the majority of the data fields defined as identifiers in the IPA and HIPAA are removed. However, various characteristics of individuals may remain that alone or in combination could contribute to identifying individuals. These characteristics have been described as quasi-identifiers. Figure 2 helps demonstrate the quasi-identifier concept. For instance, there is interest in reporting about providers, where providers may be individuals, clinics, group homes, or other entities. Each of these providers has a publicly available address and has publicly

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<sup>9</sup> Introduction to Statistical Disclosure Control, Temple et al. 2014

available characteristics. While patients may come to a provider from anywhere, they typically will visit providers within a certain distance of their residence. Thus, by publicly publishing details on providers, data miners with malicious intent would have a targeted geography that lists locality information, types of services offered and received, and demographic information about patients. To expand on this example, data that states a provider saw two patients with heart disease does not indicate who had the heart disease nor does it reveal the identity of the two patients amongst the thousands of patients that provider sees. However, datasets that display a provider within a given region with two Black or African American female patients under age 10 with heart disease may release enough personal characteristics about the patients to successfully reveal their identity. These compounding patient details released about providers that give geography information (address), health condition (heart disease), and person-based characteristics (quasi-identifiers) of the patients puts the dataset in the overlapping area of the diagram of Figure 2. This overlap, consequently, highlights potential risks associated with seemingly innocent summary data.



## 4) Statistical De-identification

The DDG describes a procedure, the Data Assessment for Public Release Procedure shown in Figure 5, to be used by departments in the CHHS to assess data for public release. This section, section 4, describes specific actions that may be taken for each step in the procedure with additional supporting information being described in sections 5, 6 and 7. These steps are intended to assist departments in assuring that data is de-identified for purposes of public release that meet the requirements of the California IPA to prevent the disclosure of personal information.

The Data Assessment for Public Release Procedure includes the following steps:

1. Review the data to determine if it includes personal characteristics, directly or indirectly, that can be tied back to an individual;
2. If there is concern for personal characteristics, then assess the data for small numerators or denominators;
3. If there is concern for small numerators or denominators, assess potential risk of data release;
4. If there is potential risk identified, assess the need to apply statistical masking methods to de-identify the data;
5. Following statistical de-identification, the data release is reviewed by legal if indicated in departmental procedures; and,
6. After statistical de-identification, the data is reviewed and approved for release based on program and policy criteria pursuant to departmental procedures.

The steps above are represented in a step-wise process shown in Figure 5. Each step is described in further detail in section 4.1 through 4.6.

Data summaries that originate from data which includes personal identifiers must be de-identified before release to the public. Additionally, data summaries about conditions experienced by individuals must be adequately de-identified to prevent re-identification of individuals represented by the summarized data. Various statistical methods are available to statistically de-identify data.

Summarized data may be reviewed in the context of the numerator and the denominator for the given presentation. The numerator represents the number of events being reported while the denominator represents the population from which the numerator is taken. For example, if it is reported that there are 50 cases of diabetes in California then the numerator would be the number of cases (50) and the denominator would be the number of people in California that could have diabetes (more than 38 million people since diabetes can occur at any age or sex). While the numerator is relatively

straight-forward to identify, the denominator can be difficult. Data summaries are frequently presented in tables in which numerators and denominators may be identified.

The numerator is typically the value in each table cell. However, the denominator can be difficult to identify given the various ways in which tables are prepared. Two examples of tables, Figure 3 and Figure 4, show the numerators and denominators in sample tables.

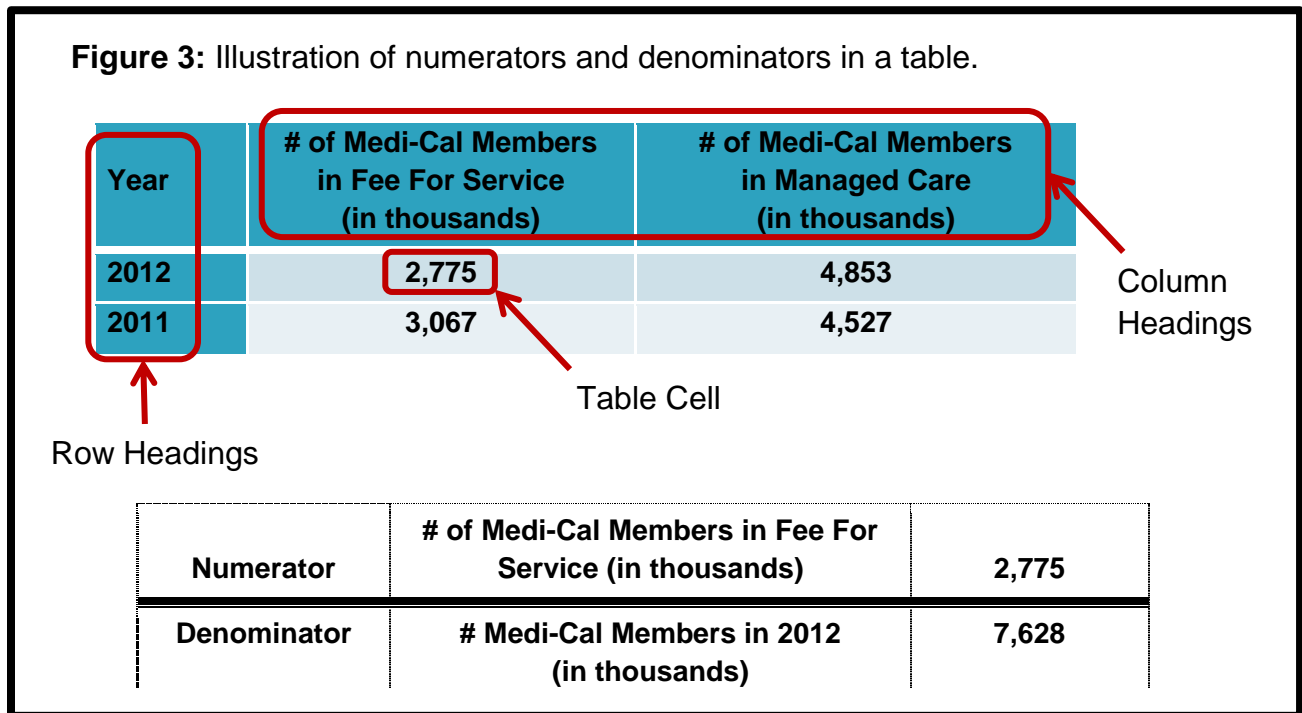


Figure 3 shows an example table with the numerator and the denominator highlighted. The Cells in the table are the boxes with values in them, as opposed to the row and column headings. The row headings are 2012 and 2011. The column headings are Year, # of Medi-Cal Members in Fee For Service (in thousands) and Number of Medi-Cal Members in Managed Care (in thousands). In Figure 3, “2,775” is the value in a table cell and represents a numerator. The sum of the row for year 2012 ( $2,775 + 4,853 = 7,628$ ) represents a denominator. In this context, the denominator may represent row totals, column totals or the total occurrences in the data set released. Data in Figure 3 comes from the “Trend in Medi-Cal Program Enrollment by Managed Care Status - for Fiscal Year 2004-2012, 2004-07 - 2012-07.”<sup>10</sup>

Figure 4 shows another type of table that contains rates. In this case, the numerator is the number of Salmonella cases for a sample of California Local Health Jurisdictions in 2014. The table also includes the rate of Salmonella for these jurisdictions. In order to

<sup>10</sup> Report Date: July 2013

[http://www.dhcs.ca.gov/dataandstats/statistics/Documents/1\\_6\\_Annual\\_Historic\\_Trend.pdf](http://www.dhcs.ca.gov/dataandstats/statistics/Documents/1_6_Annual_Historic_Trend.pdf)

calculate the rate, the population size of each jurisdiction is required, but is not shown directly in this table. The population denominator is an important element for data de-identification.

**Figure 4:** Illustration of Numerators and Denominators in a Table of Rates

### Salmonellosis Cases by Selected<sup>1</sup> County, 2014<sup>2</sup>

County	Cases	Rate
Alameda	5,361	13.9
Alpine	0	-
Amador	7	19.4*
Butte	48	21.4
Calaveras	10	22.2*
Colusa	1	4.6*

Labels

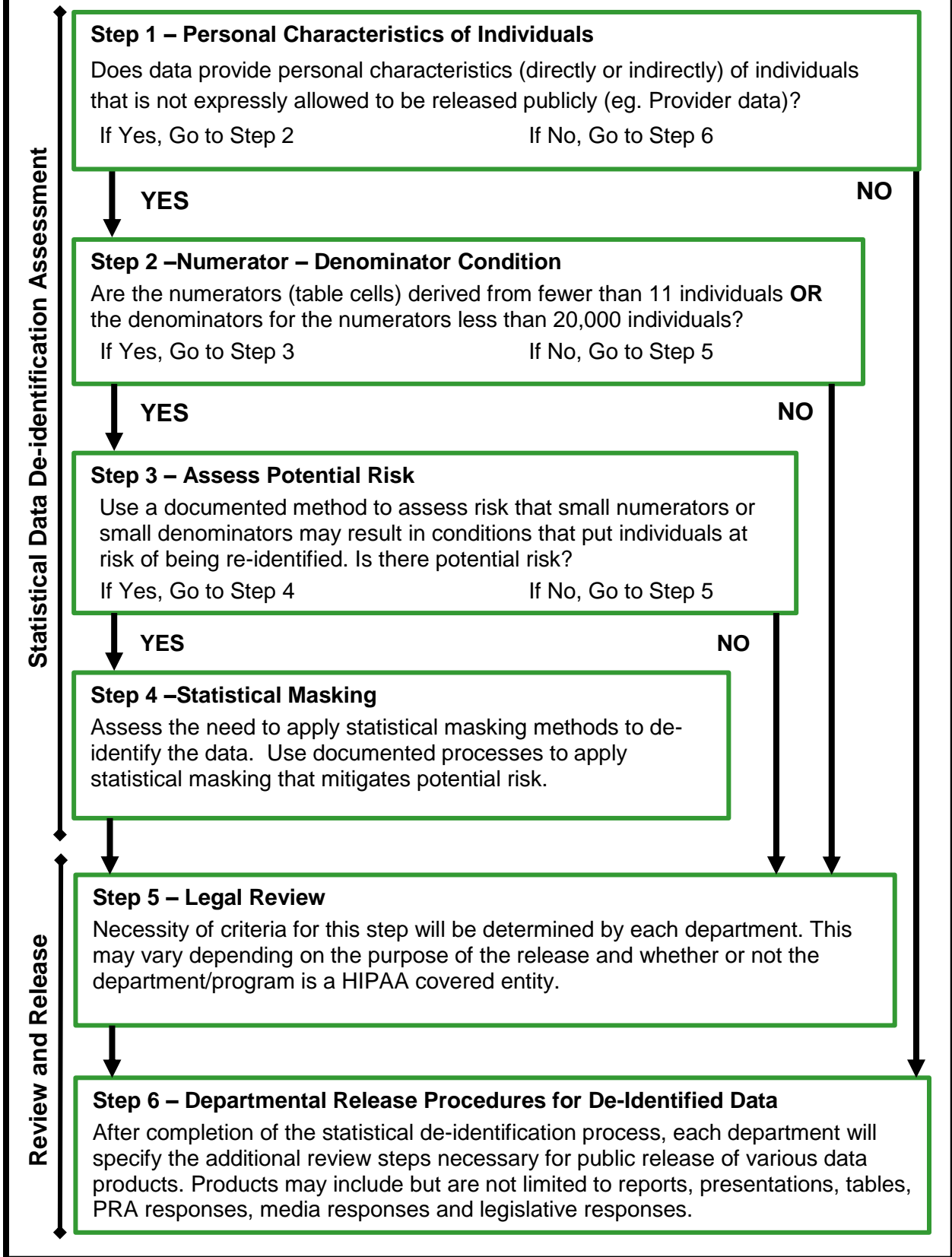
Table Cell (number of cases)

Table Cell (rate)

Population denominator is NOT shown, but is available and is required for rate calculation

1. first 6 alphabetically
  2. Adapted from YEARLY SUMMARIES OF SELECTED GENERAL COMMUNICABLE DISEASES IN CALIFORNIA, 2011-2014, available at <http://www.cdph.ca.gov/data/statistics/Documents/YearlySummaryReportsOfSelectedGeneralCommDiseasesinCA2011-2014.pdf>
- \* Unstable rate indicator

Figure 5: Data Assessment for Public Release Procedure



## 4.1 Personal Characteristics of Individuals

As described in Section 3 and Figure 2, personal characteristics of individuals introduce the most significant risk with respect to identifying individuals in a data set. The following are examples of personal characteristics.

- Identifiers as defined in CA IPA
- Identifiers as defined in HIPAA
- Demographics typically reported in census and other reporting
  - Race
  - Ethnicity
  - Language Spoken
  - Sex
  - Age
  - Socio-economic status as percent of poverty

Personal characteristics are those characteristics that are distinctive to a person and may be used to describe that person. Personal characteristics include a broader set of information than those data elements that may be specifically defined as identifiers (such as, driver license, address, birth date, etc.). Personal characteristics may also be inferred from characteristics related to provider or utilization data. For example, if presented with information about a provider that only sees women, it can be inferred that the clients are women even if that is not specifically stated in the data presentation.

## 4.2 Numerator – Denominator Condition

The Numerator – Denominator Condition represents a combination of both the Numerator Condition and Denominator Condition and for which both conditions must be met or else a more detailed assessment is required. This may be considered as an initial screening of a data set.

$$\frac{\text{Numerator – number of events with the characteristics of the given row and column}}{\text{Denominator – the population from which the events arise}}$$

The Numerator Condition sets a lower limit for the cell size of cells displayed in a table. The DDG has set this limit as any value representing aggregated or summarized records which are derived from less than 11 individuals (clients). Of note, values of zero (0) are typically shown since a non-event cannot be identified.

The Denominator Condition sets a minimum value for the denominator. The DDG has identified the lower limit for the denominator to be a minimum value of 20,000.

Since this is a Numerator – Denominator Condition, both the minimum cell size for the numerator and denominator must be met. If these conditions are met, the table can



move to Step 5 for consideration for release to the public. If either the numerator or denominator condition is not met, then the review of the data must proceed to Step 3.

### **4.3 Assess Potential Risk**

This step requires the use of a documented method to assess the risk that small numerators or small denominators may result in conditions that put individuals at risk of being re-identified.

Assessment of potential risk for a given data set must take into account a range of contributing considerations. This includes understanding particular characteristics of a given data set that is being released. For example, if the potential values for a specific personal characteristic, such as race, results in many small numbers in data set A but does not in data set B, then the risk may be low for data set B and high for data A if the groupings of the personal characteristics include the same categories. For this reason, each department or program may set different values for risk based on the underlying distribution of these variables in the data sets of interest.

There are many methods used to assess potential risk. Many of the methods that are in use throughout the country are described in the various references provided in Section 15. While each department will document the method(s) chosen for use, the following description of the Publication Scoring Criteria is provided as an example and may be adopted by departments as a method to assess potential risk.

#### **Publication Scoring Criteria: Example of tool to assess potential risk**

The Publication Scoring Criteria is used to identify the presence of small values that are considered sensitive in order to facilitate the assessment of potential risk. The Publication Scoring Criteria combines a number of conditions that increase the risk of a given data table and allows the department to evaluate those risks in combination with each other. The variables included in the Publication Scoring Criteria are those variables routinely used to publish data but are not all inclusive.

A variable is a symbol representing an unknown numerical or categorical value in an equation or table. A given variable may have different ranges assigned to it. Ranges assigned to the variable may be defined many ways which may increase or decrease the risk of identification of an individual represented in the table. This is seen in the Publication Scoring Criteria in that ranges for variables which will produce smaller groupings have a higher score.

The Publication Scoring Criteria in Figure 6 quantifies with a score two identification risks: size of potential population and variable specificity. The Publication Scoring Criteria is used to assess the need to perform statistical masking as a result of a small numerator, small denominator, or both. The Publication Scoring Criteria takes into

account both variables associated with numerators, such as Events, and with denominators, such as Geography.

This method requires a score less than or equal to 12 for the data table to be released without additional masking of the data. Any score over 12 will require the use of statistical masking methods described in section 4.4 or documentation regarding the specific characteristics of the data set that mitigate the risk.

When identifying the score for each variable, use the highest scoring criteria. For example if a table had age groups of 0 to 11 years, 12 to 14 years, and 15 to 18 years then the score for the “age range” variable would be +5 because the smallest age range is 12 to 14, which is an age range of three years.

If a variable has greater granularity than the score listed, use the highest score listed. For example, if the variable “Time” has a frequency of “weekly” then the score would be +5 which is the maximum score associated with the most granular level (monthly) of the variable in the Publication Scoring Criteria.

In addition to assessing the granularity of each variable, the interaction of the variables is also important. As discussed later in section 6.4, decreasing the granularity or the number of variables are both techniques for increasing the values for the numerators. The final criteria in Figure 6 is that for Variable Interactions. This provides for a subtraction of points if the only variables presented are the events (numerator), time and geography and an addition of points for including more variables in a given presentation. With respect to the subtraction of points, the score is based on the minimum value for the Events variable. For example, if the smallest value for the Events is 5 or more, then the score would be -5. However, if the smallest value for the Events is 2, then the score would be 0. This is discussed in more detail in Section 6.2.

In assessing risk, the scoring can be part of the justification to release or not release data but should not by itself be an absolute gateway to the release data. The review must take into account additional considerations including those that are discussed in this document in addition to the scoring.

**Figure 6: Publication Scoring Criteria**

Variable	Characteristics	Score
Events (Numerator)	1000+ events in a specified population	+2
	100-999 events	+3
	11-99 events	+5
	<11 events	+7
Sex	Male or Female	+1
Age Range	>10-year age range	+2
	6-10 year age range	+3
	3-5 year age range	+5
	1-2 year age range	+7
Race Group	White, Asian, Black or African American	+2
	White, Asian, Black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, Mixed	+3
	Detailed Race	+4
Ethnicity	Hispanic or Latino - yes or no	+2
	Detailed ethnicity	+4
Race/Ethnicity Combined	This applies when race and ethnicity are collected in a single data field	
	White, Asian, Black or African American, Hispanic or Latino	+2
	White, Asian, Black or African American, Hispanic or Latino, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, Mixed	+3
	Detailed Race/Ethnicity	+4
Language Spoken	English, Spanish, Other Language	+2
	Detailed Language	+4
Time – Reporting Period	5 years aggregated	-5
	2-4 years aggregated	-3
	1 year (e.g., 2001)	0
	Bi-Annual	+3
	Quarterly	+4
	Monthly	+5
Residence Geography*	State or geography with population >2,000,000	-5
	Population 1,000,001 - 2,000,000	-3
	Population 560,001 - 1,000,000	-1
	Population 250,000 - 560,000	0
	Population 100,000 - 250,000	+1
	Population 50,001 - 100,000	+3
	Population 20,001 - 50,000	+4
	Population ≤ 20,000	+5
Service Geography*	State or geography with population >2,000,000	-5
	Population 1,000,001 - 2,000,000	-4
	Population 560,001 - 1,000,000	-3
	Population 250,000 - 560,000	-1
	Population of reporting region 20,001 - 250,000	0
	Population of reporting region ≤20,000	+1
		Address (Street and ZIP)
Variable Interactions	Only Events (minimum of 5), Time, and Geography (Residence or Service)	-5
	Only Events (minimum of 3), Time, and Geography (Residence or Service)	-3
	Only Events (no minimum), Time, and Geography (Residence or Service)	0
	Events, Time, and Geography (Residence or Service) + 1 variable	+1
	Events, Time, and Geography (Residence or Service) + 2 variable	+2
	Events, Time, and Geography (Residence or Service) + 3 variable	+4

\* If the geography of the reporting is based on the residence of the individual, use the “Residence Geography”. If the geography of the reporting is based on the location of service, use the “Service Geography”.

## 4.4 Statistical Masking

If Step 3 determined that the data set has a risk that small numerators or small denominators may result in conditions that put individuals at risk of being re-identified, then the data set must be assessed to determine the need for statistical masking of those small values and complimentary values. In performing the statistical masking, the data producer must consider what level of analysis may be sacrificed in order to produce a table with lower risk. Initial considerations for statistical masking are described below. For additional methods related to statistical masking, please see Section 6.4.

### **Reduce Table Dimensions**

If there are more dimensions present in the table than necessary for the vast majority of analysis, the data producer should consider reducing the number of dimensions in a single table and produce multiple tables each with a subset of the dimensions in the table that resulted in small cells. For example, if there are six dimensions of interest for study, but a table that crosses all six dimensions produces a large number of small cells, the data producer could consider producing several tables each of which crosses four dimensions. This is especially effective if there are very few analytic questions requiring a cross section of all six variables.

### **Reduce Granularity of Variable(s), aka Recoding or Aggregation**

An alternative approach to addressing small cells in a table is to reduce the number of levels of a particular dimension. This is especially useful for dimensions with a large number of levels that can be easily aggregated to fewer levels and maintain much of their utility. Geographic variables such as state or county can often be recoded into regional variables that still serve the analytic needs of the data user. It is also the only table restructuring option for tables with only two or three dimensions which have limited opportunities for table dimension reduction.

It should be noted that these actions can be used alone or in tandem to reduce, or completely eliminate, small cells within a table.

### **Cell Suppression and Complementary Cell Suppression**

There will be cases where not all small cells can be eliminated by reducing granularity of dimensions or the number of dimensions present in a table. In these cases it will be necessary to suppress small cells and perform complementary suppression to ensure that precise values of small cells cannot be calculated using the values of unsuppressed cells and marginal values. In the simplest case this means ensuring that each column and row of a two dimensional table has at least two suppressions. This ensures that the

precise values of the suppressed cells cannot be calculated. Complementary suppressions are often selected using one of the methods listed below.

1. The 'analytically least interesting' level of a particular dimension. This is often, 'other', or 'I don't know'.
2. The smallest cell available for complementary suppression. This is based on minimizing the 'information loss'.
3. The cell most similar to the cell needing complementary suppression, such as adjacent age groups. This can produce complementary suppression that may be easier to interpret.

#### **4.5 Legal Review**

Necessity of criteria for this step will be determined by each department. This may vary depending on the purpose of the release and whether or not the department or program is a HIPAA covered entity or not. See Section 7 for further discussion.

#### **4.6 Departmental Release Procedure for De-identified Data**

After completion of the statistical de-identification process, each department will specify the additional review steps necessary for public release of various data products. Products may include but are not limited to reports, presentation, tables, PRA responses, media responses and legislative responses. See Section 7 for further discussion.

## 5) Types of Reporting

CHHS programs develop a wide range of information based on different types of data. This is reflected in the various categories shown on the entry page for the CHHS Open Data Portal, which include:

- Diseases and Conditions
- Facilities and Services
- Healthcare
- Workforce
- Environmental
- Demographics
- Resources

Various types of reporting may or may not have a connection to personal characteristics that would create potential risk of identifying individuals.

### 5.1 Variables

The following list of variables is important to consider when preparing data for release.

<b>Personal characteristics</b>	<b>Event characteristics</b>
Age Sex Race Ethnicity Language Spoken Location of Residence Education Status Financial Status	Number of events Location of event Time period of event Provider of event

As stated previously, variables that are personal characteristics may be used to determine a person's identity or attributes. When these characteristics are used to confirm the identity of an individual in a publicly released data set, then a disclosure of an individual's information has occurred. Individual uniqueness in the released data and in the population is a quality that helps distinguish one person from another and is directly related to re-identification of individuals in aggregate data. Disclosure risk is a concern when released data reveal characteristics that are unique in both the released data and in the underlying population. The risk of re-identifying an individual or group of individuals increases when unique or rare characteristics are "highly visible", or otherwise available without any special or privileged knowledge. Unique or rare personal characteristics (e.g., height above 7 feet) or information that isolate individuals to small demographic subgroups (e.g., American Indian Tribal membership) increase

the likelihood that someone can correctly attribute information in the released data to an individual or group of individuals.

Variables that are event characteristics are often associated with publicly available information.

Therefore, increased risk occurs when personal characteristics are combined with enough granularity with event characteristics. One could argue that if no more than two personal characteristics are combined with event characteristics then the risk will be low independent of the granularity of the variables. This hypothesis will need to be tested using various population frequencies to quantify the uniqueness of the combination of variables both the in the potential data to be released as well as in the underlying population.

## 5.2 Survey Data

Survey data, often collected for research purposes, are collected differently than administrative data and these differences should be considered in decisions about security, confidentiality and data release.

Administrative data sources (non-survey data) such as: vital statistics (e.g. births and deaths), healthcare administrative data (e.g. Medi-Cal utilization; hospital discharges), reportable disease surveillance data (e.g. measles cases) contain data for all persons in the population with the specific characteristic or other data elements of interest. Most of the discussions in this document pertain to these types of data.

On the other hand, surveys (e.g. the California Health Interview Study) are designed to take a sample of the population, and collect data on characteristics of persons in the sample, with the intent of generalizing to gain knowledge suggestive of the whole population.

The sampling methodology developed for any given survey is generally developed to maximize the sample size with the available resources while making the sample as unbiased (representative) as possible. These sampling procedures that are a fundamental part of surveys generally change the key considerations for protection of security and confidentiality. In particular, the main “population denominator” for strict confidentiality considerations remains the whole target population, not the sampled population. But, if persons have special or external knowledge of the sampled populations (e.g. that a family member participated in the survey), further considerations may be required. Also, it is in the context of surveys that issues of statistical reliability often arise—which are distinct from confidentiality issues, but often arise in related discussions.

Of particular note, small numbers (e.g. less than 11) of individuals reported in surveys do not generally lead to the same security/confidentiality concern as in population-wide

data, and as such should be treated differently than is described within the Publication Scoring Criteria and elsewhere. In this case a level of de-identification occurs based on the sampling methodology itself.

### **5.3 Budgets and Fiscal Estimates**

Budget reporting may include both actuals and projected amounts. Projected amounts, although developed with models that are based on the historical actuals, reflect activities that have not yet occurred and, therefore, do not require an assessment for de-identification. Actual amounts do need to be assessed for de-identification. When the budgets reflect caseloads, but do not include personal characteristics of the individuals in the caseloads, then the budgets are reflecting data in the Providers and Health and Service Utilization Data circles of the Figure 2 Venn Diagram and do not need further assessment. However, if the actual amounts report caseloads based on personal characteristics, such as age, sex, race or ethnicity, then the budget reporting needs to be assessed for de-identification.

### **5.4 Facilities, Service Locations and Providers**

Many CHHS programs oversee, license, accredit or certify various businesses, providers, facilities and service locations. As such, the programs report on various metrics, including characteristics of the entity and the services provided by the entity.

- Characteristics of the entity are typically public information, such as location, type of service provided, type of license and the license status.
- Services provided by the entity will typically need to be assessed to see if the reporting includes personal characteristics about the individuals receiving the services. Several examples are shown below.
  - a) Reporting number of cases of mental illness treated by each facility – if the facility is a general acute care facility then the reporting of the number of cases does not tell you about the individuals receiving the services.
  - b) Reporting number of cases of mental illness treated by each facility – if the facility is a children’s hospital then the reporting of the number of cases does tell you about the individuals receiving the services.
  - c) Reporting number of psychotropic medications prescribed by a general psychiatrist does not tell you about the patients receiving the medications.
  - d) Reporting number of psychotropic medications prescribed by a general psychiatrist to include the number of medications prescribed by the age group, sex or race/ethnicity of the patients receiving the medications does tell you about the patients receiving the medications.

In (a) and (c) above, assessment for de-identification is not necessary as there are no characteristics about the individuals receiving the services. However, in (b) and (d) above, the inclusion of personal characteristics which may be quasi-identifiers,



especially when combined with the geographical information about the provider, does require an assessment for de-identification.

## **5.5 Mandated Reporting**

CHHS programs are required to provide public reporting based on federal and California statute and regulations, court orders, and stipulated judgments, as well as by various funders. Although reporting may be mandated, unless the law expressly requires reporting of personal characteristics, publicly reported data must still be de-identified to protect against the release of identifying or personal information which may violate federal or state law.

## 6) Justification of Thresholds Identified

### 6.1 Establishing Minimum Numerator and Denominator

The DDG workgroup reviewed the published literature including information from other states and from the federal government. There was a great deal of variation in the numerical values chosen for the Numerator Condition. While the Centers for Disease Control and Prevention (CDC) WONDER database suppresses cells with numerators less than 10, the National Environmental Public Health Tracking Network suppresses cells that are greater than 0 but less than 6. Examples range from 3 to 40 with many being 10 to 15. The Centers for Medicare and Medicaid Services (CMS) uses a small cell policy of suppressing values derived from fewer than 11 individuals. As stated in a 2014 publication associated with a data release of Medicare Provider Data, “to protect the privacy of Medicare beneficiaries, any aggregated records which are derived from 10 or fewer beneficiaries are excluded from the Physician and Other Supplier PUF [public use file].”<sup>11</sup> Of note, CMS only uses a Numerator Condition.

Just as there is no consistent value for the Numerator Condition, neither is there a consistent value for the Denominator Condition. Some examples include:

- National Center for Health Statistics (public micro-data) – 250,000
- National Environmental Health Tracking Network – 100,000
- Maine Integrated Youth Health Survey – 5,000

In establishing a minimum denominator to protect confidentiality, the DDG workgroup began by looking at the risk associated with providing geography associated with record level data. As noted in the “Guidance Regarding Methods for De-identification of Protected HIPAA Privacy Rule”, published November, 2012 by the U.S. Department of Health & Human Services, Office for Civil Rights there is varying risk based on the level of zip code and how the zip code is combined with other variables. It has been estimated that the combination of a patient’s Date of Birth, Sex, and 5-Digit ZIP Code is unique for over 50% of residents in the United States.<sup>12,13</sup> This means that over half of U.S. residents could be uniquely described just with these three data elements. In contrast, it has been estimated that the

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<sup>11</sup> “Medicare Fee-For Service Provider Utilization & Payment Data Physician and Other Supplier Public Use File: A Methodological Overview,” Prepared by: The Centers for Medicare and Medicaid Services, Office of Information Products and Data Analytics, April 7, 2014.

<sup>12</sup> See P. Golle. Revisiting the uniqueness of simple demographics in the US population. In *Proceedings of the 5th ACM Workshop on Privacy in the Electronic Society*. ACM Press, New York, NY. 2006: 77-80.

<sup>13</sup> See L. Sweeney. K-anonymity: a model for protecting privacy. *International Journal of Uncertainty, Fuzziness, and Knowledge-Based Systems*. 2002; 10(5): 557-570.

combination of Year of Birth, Sex, and 3-Digit ZIP Code is unique for approximately 0.04% of residents in the United States.<sup>14</sup> For this reason, the HIPAA Safe Harbor rule specifies that the 3-Digit ZIP Code can be provided at the record level if the 3-Digit ZIP Code has a minimum of 20,000 people. By aggregating data for a given 3-Digit ZIP Code, the potential for identifying a unique individual is less than 0.04%. By combining with the Numerator Condition, the risk becomes less than 0.04% because there will be a minimum of 11 individuals with a particular age and sex for the 3-Digit ZIP Code. Additionally, most tables will provide additional levels of aggregation further reducing risk. This reduction of risk is discussed further with respect to the Publication Scoring Criteria.

A minimum denominator of 20,000 was chosen as part of the numerator-denominator condition to leverage the risk assessment cited above.

The Numerator-Denominator Condition serves as an initial screening to assess potential risk for a data set. If this condition is met, additional analysis is not necessary. If the condition is not met, then the analysis proceeds to Step 3.

## **6.2 Assessing Potential Risk – Publication Scoring Criteria**

The Publication Scoring Criteria is provided as an example of a method that meets the requirements of Step 3 in the Data Assessment for Public Release Procedure. It is a tool to assess and quantify potential risk for re-identification of de-identified data based on two identification risks: size of potential population and variable specificity. The Publication Scoring Criteria is used to assess the need to suppress small cells as a result of a small numerator, small denominator, or both small numerator and small denominator where a small numerator is less than 11 and a small denominator is less than 20,001. That is why the Publication Scoring Criteria takes into account both numerator (e.g., Events) and denominator (e.g., Geography) variables.

The Publication Scoring Criteria is based on a framework that has been in use by the Illinois Department of Public Health, Illinois Center for Health Statistics. Various other methods have been used to assess risk and the presence of sensitive or small cells. Public health has a long history of public provision of data and many methods have been used. Further discussion of other methods used to assess tables for sensitive or small cells is found in Section 6.3.

This section provides a more detailed review of the criteria that make up the Publication Scoring Criteria.

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<sup>14</sup> See L. Sweeney. Testimony before that National Center for Vital and Health Statistics Workgroup for Secondary Uses of Health information. August 23, 2007.

## Events

<b>Variable</b>	<b>Characteristics</b>	<b>Score</b>
Events	1000+ events in a specified population	+2
	100-999 events	+3
	11-99 events	+5
	<11 events	+7

The Events score represents a score for the numerator. The Events category will be scored based on the smallest cell size in the table.

The lowest value for the Events variable (<11 events) which has the highest score (+7) was chosen to be consistent with the Numerator Condition. The Publication Scoring Criteria is used when the Numerator-Denominator Condition is not met. Therefore, when the Numerator Condition is not met with respect to the Events variable, a high score is given.

## Sex

<b>Variable</b>	<b>Characteristics</b>	<b>Score</b>
Sex	Male or Female	+1

Sex is commonly represented as two categories: male and female. Because the number of categories is small, just knowing a person's reported sex is not enough to pose a risk of identifying that person. The score of +1 reflects that inclusion of the variable in a table introduces increased specificity; however, that it only has two potential values gives it a low risk.

In cases where an additional stratification of other/unknown is used for sex, the reviewer will need to assess potential for increased risk based on the inclusion of the additional stratification.

Although the variable "Sex" is often called "Gender", it should not be confused with the variables "sexual orientation" and "gender identity." According to definitions from the American Psychological Association, "Sexual orientation refers to the sex of those to whom one is sexually and romantically attracted" and "Gender identity refers to "one's sense of oneself as male, female, or transgender."<sup>15</sup>

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<sup>15</sup> Definition of Terms: Sex, Gender, Gender Identity, Sexual Orientation; Excerpt from: The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, adopted by the APA Council of Representatives, February 18-20, 2011. <http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf>

Additional information is provided from San Francisco County at <https://www.sfdph.org/dph/files/hc/HCFinance/agendas/2014/August%205/pdf%20re%20072514%20re%20age%20adopted%20090313%20-%20SFDPH%20Sex%20and%20Gender%20Guidelines.pdf>.

### Age Range

<b>Variable</b>	<b>Characteristics</b>	<b>Score</b>
Age Range	>10-year age range	+2
	6-10 year age range	+3
	3-5 year age range	+5
	1-2 year age range	+7

Age ranges receive a higher score for smaller ranges of years due to the increased risk for identification.

Of note, the HIPAA Safe Harbor method specifically identifies the following as an identifier: “All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.” Although dates are included in the Safe Harbor list, age (<90 years old) is not. The risk score to age ranges reflects the two components of the scoring criteria: size of the potential population and the variable specificity.

### Race Group and Ethnicity

Race Group	White, Asian, Black or African American	+2
	White, Asian, Black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, Mixed	+3
	Detailed Race	+4
Ethnicity	Hispanic or Latino - yes or no	+2
	Detailed ethnicity	+4
Race/Ethnicity Combined	This applies when race and ethnicity are collected in a single data field	
	White, Asian, Black or African American, Hispanic or Latino	+2
	White, Asian, Black or African American, Hispanic or Latino, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, Mixed	+3
	Detailed Race/Ethnicity	+4

Race and Ethnicity are collected in a number of different ways on the different state and federal data collection tools. At the federal level, starting in 1997, Office of Management and Budget required federal agencies to use a minimum of five race categories:

- White,
- Black or African American,
- American Indian or Alaska Native,
- Asian, and
- Native Hawaiian or Other Pacific Islander.

Ethnicity asks individuals if they are Hispanic or Latino. Additional specificity for Ethnicity may be requested.

The California population in general is approximately:<sup>16</sup>

- 40% White
- 13% Asian
- 6% Black or African American
- <1% American Indian
- <1% Native Hawaiian and other Pacific Islander
- 37% Hispanic or Latino

Based on these percentages, Race Group at the level of White, Asian and Black or African American is given a score of +2 because the Asian and Black or African American groups are relatively small. If the reporting is for the OMB standard categories, White, Asian, Black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and Mixed, then the score is +3. If more specificity is requested for Race Groups the score is +4 because the other groups are much smaller at less than 1% of the overall population. Similarly, for the Hispanic or Latino Ethnicity the score is a +2 for a yes or no answer, whereas more detailed ethnicity results in a higher score of +4.

For Race/Ethnicity Combined fields, the scoring is +2 for the groups White, Asian, Black or African American, Hispanic or Latino. The score is +3 for the OMB standard categories with Hispanic or Latino, White, Asian, Black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and Mixed. The score is +4 for more detailed categories.

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<sup>16</sup> Based on Year 2010 from the State of California, Department of Finance, Report P-1 (Race): State and County Population Projections by Race/Ethnicity, 2010-2060. Sacramento, California, January 2013

Race and Ethnicity demographics may vary significantly based on geography as well as based on particular conditions. So although the scoring criteria presents a guideline for assessing risk, the population frequencies for the specific geography and/or condition should also be taken into account. Appendix C provides the county specific demographics produced by Department of Finance for reference.

Three scenarios are presented to help demonstrate how to use the three race group and ethnicity scoring criteria.

#### First Scenario – Complete Cross-Tabulation between Race and Ethnicity

Consider this table:

	Hispanic	Non-Hispanic	
Black	50	250	300
White	200	1000	1200
Asian	5	95	100
	255	1345	1600

This is the most granular you can get, so you would add both the Race and Ethnicity score to the overall total for your scoring metric (i.e. greatest risk for re-identification). Note that you can replace “Ethnicity” with “Sex” and the principle still applies—you have a cross-tabulated table of Race and Sex.

#### Second Scenario – Race and Ethnicity merged into exclusive categories

Usually the algorithm is that Ethnicity trumps Race when categorizing. This results in a Hispanic category, with the other categories effectively becoming “Non-Hispanic Race.” So the above table would become:

- Black 250
- White 1000
- Asian 95
- Hispanic 255

This is when you would use the combined Race/Ethnicity score in the guidelines for your scoring metric.

#### Third Scenario – No Interaction between Race and Ethnicity

If you did this, the above table would become:

- Black 300
- White 1200
- Asian 100

- Hispanic 255

Note that this is the only scenario where you can't add up all the categories to get a total population. Also you would need to run the scoring metric separately for your Race-only and Ethnicity-only datasets. Like the First Scenario, you can replace Ethnicity with Sex and it still makes sense—you now have two tables, one displaying Race and the other Sex, with no interaction between the two—which lessens the Small Cell Size problem.

### Language Spoken

Variable	Characteristics	Score
Language Spoken	English, Spanish, Other Language	+2
	Detailed Language	+4

Language spoken is captured in a variety of data systems to support individuals in receiving services in the language they speak. The following table is taken from the report: Medi-Cal Beneficiaries by Primary Language Report of October, 2010.<sup>17</sup> This frequency distribution was used to determine the groupings for the scoring above.

Language Spoken	Count of Medi-Cal Members	Percent of Count
<b>Total</b>	<b>7,835,022</b>	<b>100.00</b>
English	4,135,060	52.78
Spanish	2,840,758	36.26
Vietnamese	141,289	1.80
Cantonese	85,750	1.09
Armenian	65,096	0.83
Russian	41,252	0.53
Tagalog	39,361	0.50
Mandarin	35,330	0.45
Hmong	33,594	0.43
Korean	27,814	0.35
Farsi	26,123	0.33
Arabic	23,929	0.31
Cambodian	20,476	0.26
Lao	8,355	0.11
Other Chinese	7,483	0.10
Mien	3,803	0.05
Sign Language	2,637	0.03
Thai	1,940	0.02
Portuguese	1,666	0.02
Ilocano	1,661	0.02

<sup>17</sup> <http://www.dhcs.ca.gov/services/MH/InfoNotices-Ltrs/Documents/InfoNotice-PrimaryLang-Enclosure1.pdf>



Language Spoken	Count of Medi-Cal Members	Percent of Count
Samoan	1,306	0.02
Japanese	1,215	0.02
French	653	0.01
Turkish	376	0.00
Hebrew	367	0.00
Polish	275	0.00
Italian	252	0.00
Other and unspecified	287,201	3.67

Based on the above numbers, the majority of individuals speak English or Spanish. Therefore if the table includes “English”, “Spanish”, and “Other Language” as the categories for “Language Spoken”, then the score is +2 which is comparable to reporting Hispanic or Latino Ethnicity as a “Yes or No”.

As noted for Race and Ethnicity demographics, language spoken demographics may vary significantly based on geography as well as based on particular conditions. So although the scoring criteria presents a guideline for assessing risk, the population frequencies for the specific geography and/or condition should also be taken into account.

If more specificity for Language Spoken is being requested with respect to reporting on the other languages in the table above, the request will need to be reviewed on a case by case basis. The additional review is necessary given the variability of language spoken by different populations or geographies and the consideration for potential increased risk of identification.

#### Time – Reporting Period

Variable	Characteristics	Score
Time – Reporting Period	5 years aggregated	-5
	2-4 years aggregated	-3
	1 year (e.g., 2001)	0
	Bi-Annual	+3
	Quarterly	+4
	Monthly	+5

Many reports are published based on the calendar year. However, the combination of years of data is an excellent way to provide increased aggregation in a way that allows for more specificity elsewhere, such as county identifiers. Inversely, the smaller the time period in the data, the closer the time period comes to approximating a date. Thus monthly reported data has a high score of +5.

Of note, the HIPAA Safe Harbor method list includes “All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.” This is a potential identifier when in combination with other information. This potential as an identifier influences the higher scores in the Publication Scoring Criteria as the time period for aggregation gets smaller.

The “0” value for this variable is set at one year as this is the criteria for Safe Harbor under the HIPAA de-identification standard.

### Geography

<b>Variable</b>	<b>Characteristics</b>	<b>Score</b>
Residence Geography*	State or geography with population >2,000,000	-5
	Population 1,000,001 - 2,000,000	-3
	Population 560,001 - 1,000,000	-1
	Population 250,000 - 560,000	0
	Population 100,000 - 250,000	+1
	Population 50,001 - 100,000	+3
	Population 20,001 - 50,000	+4
	Population ≤ 20,000	+5
Service Geography*	State or geography with population >2,000,000	-5
	Population 1,000,001 - 2,000,000	-4
	Population 560,001 - 1,000,000	-3
	Population 250,000 - 560,000	-1
	Population of reporting region 20,001 - 250,000	0
	Population of reporting region ≤20,000	+1
	Address (Street and ZIP)	+3

\* If the geography of the reporting is based on the residence of the individual, use the “Residence Geography”. If the geography of the reporting is based on the location of service, use the “Service Geography”.

The Geography score, while it may or may not represent the denominator of the table, does provide a reference to the base population about which the reporting is occurring. This will often be reflected in the title of the table if a statewide table. Otherwise the geography may be represented in the rows or columns. There are two different scoring sets based on whether the geography reporting is based on the residence of the individual to which the information applies or to the service location.

The scores are higher for geography related to residence address because so much information is publicly available about individuals and their address of residence. For large populations greater than 560,000, which is equivalent to the size of a state, there is a negative score because the size of the denominator masks the individual. The number 560,000 was chosen as a cut-off because this is the size of the smallest state (Wyoming). We chose to use the cut-off at the smallest state's population because state level reporting is not listed as one of the 18 identifiers the HIPAA Safe Harbor method.

The scores for the service geography are lower because clients can generally come from diverse locations for services. Although people often seek services or have health conditions close to their homes, they may also travel extensive distances. Reviewers do need to make sure that there are not constraints associated with services that would mean the service geography and resident geography are the same. For example, if a program publishes service utilization by county and the county services can only be used by county residents, then the service utilization by county is also the county of residence. Scoring should be based on the criteria that results in the highest score and thus the highest risk.

Service Geography includes a level of detail that is identified as "Address (Street and ZIP)." This deals with reporting by provider (hospital, clinic, provider office, etc.) Provider addresses are public information and are public at the street address level. A given provider will tend to have a standard catchment area or the geographic boundaries from which most patients come from. This information is published by Office of Statewide Health Planning and Development (OSHPD) <sup>18</sup> for hospitals. While this addresses where most patients or clients come from, patients or clients may also come from outside the catchment area. For that reason this does not score as high as the more detailed geography under Residence Geography.

#### Variable Interactions

<b>Variable</b>	<b>Characteristics</b>	<b>Score</b>
Variable Interactions	Only Events (minimum of 5), Time, and Geography (Residence or Service)	-5
	Only Events (minimum of 3), Time, and Geography (Residence or Service)	-3
	Only Events (no minimum), Time, and Geography (Residence or Service)	0

<sup>18</sup> Office of Statewide Health Planning and Development (OSHPD), Patient Origin & Market Share Reports, Retrieved from <http://www.oshpd.ca.gov/HID/Products/PatDischargeData/PivotTables/PatOrginMkt/default.asp> on January 22, 2016.

	Events, Time, and Geography (Residence or Service) + 1 variable	+1
	Events, Time, and Geography (Residence or Service) + 2 variables	+2
	Events, Time, and Geography (Residence or Service) + 3 variables	+4

This criteria specifically addresses the interaction of the variables in a given data presentation and requires the analyst to identify dependent as opposed to independent variables. This criteria is used with respect to dependent variables. This is demonstrated in the two tables below.

#### Illustration A: Dependent Variables

In this example the Event (counts of Disease A) is shown for Males who are also 0-17 years old or Males who are also 18-25 years old. In this case Sex and Age are dependent because the stratification for each variable is stacked. This commonly occurs in pivot tables.

Counts of disease A by year	Males and 0-17 years old	Males and 18-25 years old	Females and 0-17 years old	Females and 18-25 years old
Year 1	6	10	5	8
Year 2	8	14	3	20

#### Illustration B: Independent Variables

In this example the Event (counts of Disease A) is for Males or Females which is shown side by side to a table with ages 0-17 years old or 18-25 years old. In this case Sex and Age are independent because the stratification for each variable is not stacked. Although the two variables Sex and Age are shown in the same table, they are presented independently of each other. While you can compile the data in Example B from Example A, the reverse is not true.

Counts of disease A by year	Males	Females	0-17 years old	18-25 years old
Year 1	16	13	11	18
Year 2	22	23	11	34

This criteria is structured to have less impact if personal characteristics outside of time and geography are excluded and more impact if multiple personal characteristics are included. This provides for a subtraction of points if the only variables presented are the events (numerator), time and geography and an addition of points for including more variables in a given presentation. With respect to the subtraction of points, the score is based on the minimum value for the Events variable. For example, if the smallest value for the Events is 5 or more, then the score would be -5. However, if the smallest value for the Events is 2, then the score would be 0.

The minimum value for Events of 3 (*Only Events (minimum of 3), Time, and Geography (Residence or Service)*) is used as a threshold to address concern for pre-existing knowledge by users about individuals. For example, if an entity knows who one person is with disease A and the count for Events is “1” or “2”, then the entity could identify the person they know of or the person they know of plus information about the other person. The use of a minimum of 3 does not protect against two entities colluding to determine a third person.<sup>19</sup> For this reason, the threshold of 5 for Events is also given. The threshold of 5 is frequently used in public health reporting regarding various events.

In contrast, if additional demographic variables are added, then the risk increases significantly. For example, for Events, Time and Geography (Residence or Service) with three additional variables, a table would show how many individuals are female by age group by race for a given time period and geography. This allows for a more detailed comparison to census data and assessment of the number of individuals with a particular set of characteristics.<sup>20</sup> For this reason, additional points are added because of the inclusion of multiple dependent variables.

### Other Variables

Variables other than those specified in the Publication Scoring Criteria can be released only after an additional review by the department’s Statistical Expert on a case by case basis. A guideline that can be considered in performing this review is the following scoring.

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<sup>19</sup> NORC, “NORC Recommendations for California Department of Health Care Services (DHCS) Data De-Identification Guidelines (DDG),” January 8, 2016.

<sup>20</sup> NORC, “Case Study: The Disclosure Risk Implications of Small Cells Combined with Multiple Tables or External Data,” January 8, 2016.

Variable	Characteristics	Score
Other Variables	<5 groups or categories	+3
	5-9 groups	+5
	10+ groups	+7

Considerations include not just the number of groups, but also the characteristics of the variables. Consider whether the variable represents an aggregation (Diagnosis Related Groups) or a specific item (ICD-10 Code). Also consider the availability of the variable to the public when also associated with other information, in particular with variables that may be personal characteristics.

### 6.3 Assessing Potential Risk – Alternate Methods

As noted in Section 6.2, the Publication Scoring Criteria is based on a framework that has been in use by the Illinois Department of Public Health, Illinois Center for Health Statistics. Various other methods have been used to assess risk and the presence of sensitive or small cells. Public health has a long history of public provision of data and many methods have been used. Some of those methods are highlighted here.

- Ohio Department of Health published a Data Methodology Standards for Public Health Practice.<sup>21</sup> This method is framed around the concept that a Disclosure Limitation Standard for tabulations of confidential Ohio Department of Health data shall be suppressed when the table denominator value minus the table numerator value is less than 10.
- Washington State Department of Health published Guidelines for Working with Small Numbers<sup>22</sup> that highlights many topics covered in the CHHS DDG but also discusses the use of relative standard error (RSE) to assess reliability of data in addition to steps to take protect confidentiality.
- Colorado Department of Public Health and Environment published Guidelines for Working with Small Numbers<sup>23</sup> which also addresses many of the same topics.

The size of numerators and denominators vary in each of the documents above although the principles are consistent.

<sup>21</sup> Ohio Department of Public Health. "Data Methodology for Public Health Practice." <http://www.odh.ohio.gov/~media/ODH/ASSETS/Files/data%20statistics/standards/methodological%20standards/disclimit.ashx>.

<sup>22</sup> Washington State Department of Health. "Guidelines for Working with Small Numbers." N.p., 15 October 2012. Retrieved from <http://www.doh.wa.gov/Portals/1/Documents/5500/SmallNumbers.pdf>.

<sup>23</sup> Colorado Department of Public Health and Environment. "Guidelines for Working with Small Numbers." Retrieved from <http://www.cohid.dphe.state.co.us/smnumguidelines.html>

## 6.4 Statistical Masking

Statistical masking provides an extensive set of tools that can be used to mitigate potential risk in a given data presentation. As discussed in Section 4.4, the data releaser will assess the need for statistical masking when the assessment in Step 3 identified potential risk. Each department will document statistical masking processes that are routinely used in data preparation for public release.

As discussed in section 4.4, initial methods to address sensitive or small cells, as well as complimentary cells include the following:

- Reduce Table Dimensions
- Reduce Granularity of Variable(s), aka Recoding or Aggregation
- Cell Suppression and Complementary Cell Suppression

Small cell sizes are typically encountered when one of the following conditions is met.

- a) Multiple variables. This most often occurs in a pivot table presentation or a query interface where a user may have occurrences of disease X, stratified by county, stratified by sex, stratified by race and ethnicity.
- b) Granular variables. The more granular the variable the smaller the potential numerator and denominator. This most commonly occurs with shortening the time period of reporting (weekly) or making the geography more specific (zip code or census tract). However, it can also occur when there are many categories for a variable. An example of this is aid codes in Medi-Cal where there are almost 200 aid codes.
- c) Rare events. Examples include diseases such as hemophilia. Examples of incidents may result from mass trauma events such as a plane crash or multi-car accident.

In each of these cases, statistical masking may be addressed in a number of ways. For this reason, it is important to keep in mind the purpose for the reporting so that the method chosen for masking can still maximize the usefulness of the data provided. Choices for each condition are highlighted below.

- a) Multiple variables. Options include separating the table into multiple tables that limit the number of variables included in each table; decreasing the granularity of the variables included in the table; or suppressing the small cell with an indicator that it is less than 11.
- b) Granular variables. A common approach to this situation would be to decrease the granularity of the variables although suppressing the small cell with an indicator that it is less than 11 is also an option.

- c) Rare events. In these cases it becomes very challenging to suppress the value in a way that it will not be able to be used with other public information to identify individuals. Additionally, with rare events, there is more significance in the variance of small numbers.

In addition to small cells, complementary cells must also be suppressed. Complementary cells are those which must be suppressed to prevent someone from being able to calculate the suppressed cell based on row or column totals in combination with other data in that row or column.

Suppressing small cell values and complimentary cells can be done in two ways.

- 1) Use a symbol to indicate the cell has been suppressed. Identify any other cells (complimentary cells) that can be used to calculate the small cell and use a symbol to indicate the cell has been suppressed.
- 2) Use a symbol to indicate the cell has been suppressed or leave the cell blank and remove the value from all pertinent row and column totals so that the cell cannot be calculated. This negates the need for evaluation of complementary cells. This method must be used with great caution because the totals may actually be published in other non-related tables. For this reason the method is not recommended.

When suppressing values, the following footnote to indicate the suppression is recommended:

“Values are not shown to protect confidentiality of the individuals summarized in the data.”

In addition to the above, there are a number of other methods that may be used for Statistical Masking. Methods discussed in the “Statistical Policy Working Paper 22 (Second version, 2005), Report on Statistical Disclosure Limitation Methodology” include the following for tables of counts or frequencies and for magnitude data.<sup>24</sup>

#### Tables of Counts or Frequencies

- Sampling as a Statistical Disclosure Limitation Method
- Defining Sensitive Cells
  - Special Rules
  - The Threshold Rule
- Protecting Sensitive Cells After Tabulation
  - Suppression

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<sup>24</sup> Federal Committee on Statistical Methodology, Statistical Policy Working Paper 22 – Report on Statistical Disclosure Limitation Methodology. Washington: Statistical Policy Office, Office of Management and Budget, 1994.



- Random Rounding
- Controlled Rounding
- Controlled Tabular Adjustment
- Protecting Sensitive Cells Before Tabulation

#### Tables of Magnitude Data

- Defining Sensitive Cells – Linear Sensitivity Rules
- Protecting Sensitive Cells After Tabulation
- Protecting Sensitive Cells Before Tabulation

## 7) Approval Processes

After completion of the statistical de-identification process, each department will specify the additional review steps necessary for public release. This may vary depending on the purpose of the release and whether or not the department/program is a HIPAA covered entity.

Recognizing that some data analyses may be published as independent tables while other analyses will be part of larger reports, the final review of all data analyses must follow the department or office procedures for document review in addition to review procedures identified for the implementation of the DDG. The expectation is that the review of data for de-identification will fit into other routine review processes. Reviews outside the DDG portion may vary depending on whether data is being released for a PRA request, to the media, to the legislature, by the program as part of routine reporting, or for other reasons.

Departments and offices may consider the following components for reviews related to data that has been de-identified.

- Statistical Review to Assess De-identification  
(for HIPAA entities this may be an Expert Determination Review)
- Legal Review
- Departmental Release Procedures

### *Statistical Review to Assess De-identification (Steps 1, 2, 3 & 4)*

The department or office may designate individuals within the department to provide a statistical review of data products before they are released to ensure the data has been de-identified with methods that are consistent with these guidelines.

For HIPAA covered entities, this will be performed by individuals who are considered experts for the purpose of performing expert determinations in compliance with the HIPAA Privacy Rule, and who meet the Rule's implementation specifications: "A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable" [45 CFR Section 164.514(b)(1)] This expert determination review, according to the regulation's requirements, will be performed by:

"(1) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

- (i) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with

other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and  
(ii) Documents the methods and results of the analysis that justify such determination”<sup>25</sup>

When an expert determination review is requested, the Expert Determination Review must include a document that includes the expert’s determination that “the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information,” attests that the requirements of 45 CFR section 164.514 (b)(1)(i) and (ii) have been met, and includes (or attaches) the documentation required by 45 CFR section 164.514(b)(1)(ii). This document must be signed by the expert.

These guidelines provide a starting point for expert determination review; however, the facts of each case chosen for expert determination review must be analyzed on an individual, case-by-case basis by the expert. If followed, the Guidelines may be referenced as part of the documentation used to support the expert determination. The documentation should also include a general description of the principles, methods, and analyses used, as well as an explanation of the analysis that justifies the expert determination.

The expert determination review may use the Expert Determination Template in Appendix A. The Expert Determination Template includes a confirmation that “the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information.”

If methods that have been used to de-identify the data are not described in the Guidelines, then the Expert will need to provide additional documentation that explains the statistical and scientific principles and methods used and the results of the additional analysis.

#### *Legal Review (Step 5)*

Step 5 in the Data Assessment for Public Release Process provides for a legal review within the department. This may vary depending on the purpose of the release and whether or not the department or program is a HIPAA covered entity or not. This review may assess the data to be released for risk to the Department, and for potential implications on litigation, statutory or regulatory conditions on data release, and other legal considerations that may impact release. Legal Services may review the expert

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<sup>25</sup> 45 CFR section 164.514 (b)

determination documentation to ensure compliance with the HIPAA Privacy Rule as applicable.

#### *Departmental Release Procedures (Step 6)*

Step 6 in the Data Assessment for Public Release Process provides for departmental release procedures for de-identified data. After completion of the statistical de-identification process, each department will specify the additional review steps necessary for public release of various data products. Products may include but are not limited to reports, presentation, tables, PRA responses, media responses and legislative responses.

Potential reviews include Public Affairs. Public Affairs is often designated to receive all publications, brochures, or pamphlets intended for public distribution to be printed or reproduced to review the material to determine if it requires Agency Approval or Governor's Office approval. Public Affairs may also be designated to review content to assess the data table for compliance with the Americans with Disabilities Act of 1990<sup>26</sup> (ADA).

Departments may also consider processes for quality assurance reviews: The may apply to data products being added to the web sites to ensure that they have had appropriate reviews and de-identification steps. It may also include reviews of updated reports. Many reports maintain the same variables and formats but have updated numbers/information on a periodic basis (monthly, quarterly, annually). For these reports, departments may consider a centralized review to ensure data products are consistent with previously reviewed reports and have not had changes that would change the previous assessment.

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<sup>26</sup> 42 U.S.C 12101 et seq.

## 8) DDG Governance

Governance for DDG will be provided by the Data Subcommittee with support from the Risk Management Subcommittee. The Subcommittees are part of the CHHS governance structure as described in the CHHS Information Strategic Plan.<sup>27</sup>

Governance for the CHHS DDG will provide the following support for departments and offices.

- Maintain the CHHS DDG, which will include updates and revisions to the document as well as annual reviews for currency.
- Coordinate integration of the CHHS DDG into the Statewide Health Information Policy Manual (SHIPM), Section 2.5.0 De-identification<sup>28</sup> and the CHHS Open Data Handbook.
- Convene a Peer Review Team (PRT).
- Provide for escalation of issues that cannot be resolved by the PRT.

The CHHS PRT will include no more than two representatives from each department or office. Membership of the PRT is expected to include individuals with the following background and experience.

- Knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable.
- Knowledge of and experience with legal principles associated with data de-identification in compliance with California IPA and HIPAA.

The PRT will have the following responsibilities:

- Provide review and consultation regarding a department's DDG to ensure it is consistent with the CHHS DDG. This may be particularly useful if a department incorporates methods for de-identification in the department's DDG that have not already been documented in the CHHS DDG.
- Provide for escalation and review of data de-identification questions or issues that a department is not comfortable resolving independently.
- Develop training tools to be used by departments when developing and implementing department specific DDGs based on the content of the CHHS DDG.

The PRT will not review all disclosures or data released by each department.

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<sup>27</sup> California Health and Human Services Agency, Information Strategic Plan 2016.

<sup>28</sup> <http://www.ohi.ca.gov/calohi/ohii-shipm-manual.htm>

## 9) Publicly Available Data

A critical step in reviewing data for public release is the consideration of what other data may be publicly available that could be used in combination with the newly released data to identify the individuals represented in the data. This section will highlight some specific data sets that are publicly available that may be used in combination with CHHS data that would contribute to potential increased risk.

Common kinds of data with personal information include: real estate records, individual licensing databases (MD, RN, contractors, lawyers, etc.), marriage records, news (and other) media reports, commercially available databases (data brokers, marketing), court documents, etc.

### Vital Records Data

Another common data set for programs to be aware of are the publicly available electronic birth and death indices from Vital Records, as specified in Health and Safety Code section 102230(b).

The following are provided in the birth record indices:

- First, middle, and last name
- Sex
- Date of birth
- Place of birth

The following are provided in the death record indices:

- First, middle, and last name
- Sex
- Date of birth
- Place of birth
- Date of death
- Place of death
- Father's last name

Other potential sources of publicly available data to consider are informational certified copies of birth and death certificates. In California, anyone can obtain an informational certified copy of birth and death certificates, which are clearly marked as un-authorized copies that cannot be used to verify identity. In reality, it is difficult to use these as a dataset for the following reasons:

- Certified copies of birth and death certificates must be obtained on an individual basis, and you must be able to identify the record. In other words, an individual cannot simply ask for a stack of certificates for purposes of creating a dataset.
- Certified copies are issued on specialized banknote paper, not in electronic format, which creates a problem of scale when trying to create a dataset.
- There is a \$25 fee for each certified copy of a birth certificate and \$21 for a certified copy of a death certificate, which also creates a problem of scale when trying to create a dataset.
- Certified copies are meant for individual use. A request for a large amount of certificates may generate an investigation among vital records staff as to why so many certificates were requested at once.

### CHHS Open Data Portal

As additional data sets are added to the Open Data Portal, programs need to take that information into account when considering potential risk for any given data set. The CHHS Open Data Workgroup will be providing easier access to both lists of data currently on the portal as well as data sets planned for addition to the portal. While significant with over 100 data sets, this is not exhaustive because of the PRA, which allows for an extremely broad amount of information to be released in a sporadic way. So some specificity can occur but not completely. CHHS departments have a duty of due diligence in the de-identification process regarding consideration of published identifiable data, published de-identified data and the soon to be published de-identified data.

Listed below are individual records or documents that the Department of Rehabilitation have available to the public:

- Fair Hearing Decisions include appellant's initials and possibly other information, depending on issue appellant presents for hearing, such as sex, disability, employment, education, vocational rehabilitation services, etc.; and
- Monthly Operating Reports and information therefrom includes names of licensees and financial information regarding the operation of the licensees' operation of vending facilities in the Business Enterprises Program for the Blind. To be eligible for this program, the individuals must be legally blind.

### Public Census and Demographic Information

The Demographic Research Unit (DRU) of the California Department of Finance is designated as the single official source of demographic data for state planning and budgeting.<sup>29</sup> The DRU produces the following products which serve as the basis for

<sup>29</sup> <http://www.dof.ca.gov/research/demographic/dru/index.php>

understanding the population characteristics and distributions that frequently make up the denominators in the review of data sets.

- Estimates - Official population estimates of the state, counties and cities produced by the Demographic Research Unit for state planning and budgeting.
- Projections - Forecasts of population, births and public school enrollment at the state and county level produced by the Demographic Research Unit.
- State Census Data Center - Demographic, social, economic, migration, and housing data from the decennial censuses, the American Community Survey, the Current Population Survey, and other special and periodic surveys.

### Commonly Shared Information

With the growth of social media, people frequently share information through tools such as Facebook, Linked In, and Tweets. While it would be impossible to take into account all information that people make public about themselves, there is an expectation that a certain amount of information is likely to be in the public domain based on information individuals frequently provide about themselves. Examples of such information include wedding dates, birth dates, education (high school, college) and professional certifications.

### Geographic Information

Geographic information is particularly suited to being combined with other geographic information given the relatively standardized way data is coded (latitude, longitude, county, etc.) With the use of mapping tools, various information can be combined in a way that is called a “mash up.” “A mashup, in web development, is a web page, or web application, that uses content from more than one source to create a single new service displayed in a single graphical interface. For example, you could combine the addresses and photographs of your library branches with a Google map to create a map mashup.[1] The term implies easy, fast integration, frequently using open application programming interfaces (open API) and data sources to produce enriched results that were not necessarily the original reason for producing the raw source data.”<sup>30</sup>

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<sup>30</sup> [http://en.wikipedia.org/wiki/Mashup\\_\(web\\_application\\_hybrid\)](http://en.wikipedia.org/wiki/Mashup_(web_application_hybrid))



## 10) Development Process

The CHHS Data Subcommittee requested the convening of the CHHS Data De-Identification Workgroup to develop the DDG.

The DDG Workgroup began with an orientation to the topic of data de-identification and presentations by the DHCS, OSHPD and California Department of Public Health (CDPH) regarding current practices and activities related to data de-identification. The DDG Workgroup used the Public Aggregate Reporting for DHCS Business Reports (PAR-DBR) as a starting point for initial drafts. The PAR-DBR had been developed between April and August, 2014 through a workgroup processes within DHCS with input and presentations from OSHPD, CDPH, and University of California, Los Angeles California Health Interview Survey. The PAR-DBR served as a basis for this document, including the literature review conducted as part of the development of the PAR-DBR.

The development process was designed to include an updated literature review, case examples and broad discussion among CHHS programs. Publishing data publicly is always a balance between the protection of confidentiality and the usability of the data.

The project timeline for the CHHS DDG Workgroup is below:

3/15/15	Planning Meeting Part 1 – Participants included DHCS, CDPH, OSHPD, OHII
3/20/15	Planning Meeting Part 2 – Participants included DHCS, CDPH, OSHPD, OHII
4/7/15	Present Objectives for the project and use the DHCS PAR-DBR as an example
4/23/15	Presentations from OSHPD and CDPH regarding current processes and approach to small cell sizes
5/5/15	Discuss concept of uniqueness as a way to measure risk for re-identification and gather input from Departments/Offices regarding DDG variables and topics
5/27/15	Review initial draft DDG – Focus on new sections of the document
6/8/15	Review initial draft DDG – Focus on Data Assessment for Public Release Procedure
May & June, 2015	Meet with each department/office individually

- 6/30/15 Review draft DDG version 0.2
- July 2015 Departments/offices vet the DDG within their departments/offices
- 8/21/15 Received input from the CHHS Risk Management Committee
- 8/6/15 Review draft DDG version 0.3
- 9/14/15 Progress update for DDG Workgroup and discussion of additional topics
- 12/18/15 Presentation from NORC to review their findings of the draft DDG
- 1/8/16 Receive final recommendations from NORC
- Jan. 2016 Provide DDG version 0.4 to DDG Workgroup
- 2/18/16 Review and discussion of draft DDG version 0.4 with the DDG Workgroup
- 3/18/16 Provide DDG version 0.5 with outstanding comments from the DDG Workgroup to the Data Subcommittee
- 4/18/16 Provide revised draft DDG to the Data Subcommittee.
- 5/24/16 Provide draft DDG version 0.7 from the CHHS Data Subcommittee to the CHHS Advisory Council. The Advisory Council shared the DDG version 0.7 with the other subcommittees and discussed the version 0.7 at the 6/8/16 meeting and the version 0.8 at the 7/6/16 meeting.
- 7/7/16 Provide draft DDG version 0.10 to the Undersecretary.
- 9/23/16 DDG approved by CHHS Undersecretary as Version 1.0.

The final document will be incorporated into the Open Data Handbook and made publicly available.

## 11) Legal Framework

The overarching legal framework for the CHHS Data De-identification Guidelines is the California Information Practices Act, California Civil Code 1798 et seq., which was established in 1977 and applies to all state government entities. The IPA includes requirements for the collection, maintenance, and dissemination of any information that identifies or describes an individual. The IPA and other California statutes limit the disclosure of personal information, consistent with the California Constitutional right to privacy. However, state agencies are generally permitted (and sometimes required under the California Public Records Act and other laws) to disclose data that have been de-identified. Summarized or aggregated data may still be identifiable; the DDG provides Guidelines for assessing whether data have been de-identified.

While most state agencies are covered by the IPA, some are also covered by or impacted by HIPAA. Unlike the IPA, which applies to all personal information, HIPAA only applies to certain health or healthcare-related information. HIPAA requirements apply in combination with IPA requirements.

“Personal Information” is defined by the California Civil Code section 1798.3(a) as “any information that is maintained by an agency that identifies or describes an individual, including, but not limited to,

- his or her name,
- social security number,
- physical description,
- home address,
- home telephone number,
- education,
- financial matters, and
- medical or employment history.
- It includes statements made by, or attributed to, the individual.”

Under Section 1798.24 of the IPA, “An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains,” unless it is disclosed as described in Section 1798.24.

Senate Bill 13 updated the IPA, effective January 1, 2006, to require Committee for the Protection of Human Subjects (CPHS) review and approval before personal information (linkable to any individual) that is held by any state agency or department can be released for research purposes. CPHS does not delegate reviews for compliance with the IPA to other institutional review boards. (<http://www.oshpd.ca.gov/Boards/CPHS/>)

**California Laws Governing the Collection and Release of Confidential, Personal, or Sensitive Information** (please note that this is not an exhaustive list)

General State Collected Information and Data

- Civ. Code 1798.24, 1798.24a, 1798.24b (all personal information including health data)
- Gov. Code 11015.5 (electronically collected personal information)

General Medical Data

- Civ. Code 56.10 – 56.11
- Civ. Code 56.13
- Civ. Code 56.29
- Health & Saf. Code 128730
- Health & Saf. Code 128735
- Health & Saf. Code 128736
- Health & Saf. Code 128737
- Health & Saf. Code 128745
- Health & Saf. Code 128766

Birth Defects

- Health & Saf. Code 103850

Blood Lead Analysis

- Health & Saf. Code 124130

Cancer

- Health & Saf. Code 104315
- Health & Saf. Code 103875
- Health & Saf. Code 103885

Child Health Information

- Health & Saf. Code 130140.1

Child Health Screening

- Health & Saf. Code 124110
- Health & Saf. Code 124991

## Cholinesterase Testing

- Health & Saf. Code 105206

## Developmentally Disabled

- Health & Saf. Code 416.18
- Health & Saf. Code 416.8
- Welf. & Inst. Code 4514, 4514.3, 4514.5
- Welf. & Inst. Code 4517 (aggregation and publication of data)
- Welf. & Inst. Code 4744
- Welf. & Inst. Code 4659.22

## Environmental Health Hazards

- Health & Saf. Code 59016

## General Public Health Records

- Health & Saf. Code 121035
- Health & Saf. Code 100330

## Genetic Information

- Health & Saf. Code 124975
- Health & Saf. Code 124980
- Health & Saf. Code 125105 (prenatal test)
- Civ. Code 56.17

## HIV/AIDS

- Health & Saf. Code 121022
- Health & Saf. Code 121023
- Health & Saf. Code 121025
- Health & Saf. Code 121075
- Health & Saf. Code 121085
- Health & Saf. Code 121110
- Health & Saf. Code 121125
- Health & Saf. Code 121010
- Health & Saf. Code 120820
- Health & Saf. Code 120980
- Health & Saf. Code 121280
- Health & Saf. Code 120962

- Health & Saf. Code 120975
- Health & Saf. Code 121080
- Health & Saf. Code 121090
- Health & Saf. Code 121095
- Health & Saf. Code 121120
- Rev. & T. Code 19548.2

#### Immunizations

- Health & Saf. Code 120440

#### Independent Medical Review

- Health & Saf. Code 1374.33

#### Involuntary Mental Health (LPS covered records)

- Welf. & Inst. Code 5328 through 5328.9
- Welf. & Inst. Code 5329 (aggregation and publication of data)
- Welf. & Inst. Code 5540
- Welf. & Inst. Code 5610
- Welf. & Inst. Code 4135
- Educ. C. 56863

#### Medi-Cal Data

- Welf. & Inst. Code 14100.2
- Welf. & Inst. Code 14015.8
- Welf. & Inst. Code 14101.5

#### Parkinson's Disease Registry

- Health & Saf. Code 103865

#### Payment and Billing Info

- Health & Saf. Code 440.40 (applies only to GACHs)

#### Prenatal Tests

- Health & Saf. Code 120705
- Health & Saf. Code 125105

## Public Assistance

- Welf. & Inst. Code 10850 (Confidential Information)

## Public Social Services

- Welf. & Inst. Code 10850

## Substance Abuse Treatment Data

- Health & Saf. Code 11845.5
- Health & Saf. Code 11812

## Vital Records

- Health & Saf. Code 102430
- Health & Saf. Code 102425
- Health & Saf. Code 102426
- Health & Saf. Code 102455
- Health & Saf. Code 102460
- Health & Saf. Code 102465
- Health & Saf. Code 102475
- Health & Saf. Code 103025

## **Federal Laws Governing Public Data Release**

(please note that this is not an exhaustive list)

- HIPAA - Section 164.514 of the HIPAA Privacy Rule (45 CFR)
- 42 CFR Part 2
- Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)
- Freedom of Information Act (FOIA) (5 U.S.C. § 552)

## **Data De-identification**

While the IPA does not include specific de-identification methods or criteria, the basic concept of statistical de-identification has no different meaning, and the basic standard of protection of identifiable data is no different for IPA covered PI than for HIPAA covered PHI.

The California Office of Health Information Integrity (CalOHII) is authorized by state statute to coordinate and monitor HIPAA compliance by all California State entities within the executive branch of government covered or impacted by HIPAA. The 2014 assessment that was revised July 2015, identified programs and departments in CHHS

that are considered covered entities under HIPAA as a Health Care Provider, Health Care Plan, Health Care Clearinghouse, Hybrid Entity or Business Associate. Detail is provided in Appendix B. One difference between CA IPA and HIPAA is the documentation requirement in HIPAA for data de-identified using the Expert Determination method. Each of the following departments will need to identify which programs within the department are impacted by HIPAA as part of the department specific DDG.

- Department of Aging
- Department of Developmental Services
- Department of Health Care Services
- Department of Managed Health Care
- Department of Public Health
- Department of Social Services
- Department of State Hospitals
- Health and Human Services Agency
- Office of Systems Integration

For programs and departments that are covered by HIPAA, de-identification must meet the HIPAA standard. The DDG serves as a tool to make and document an expert determination consistent with the HIPAA standard. The following comes from federal guidance for HIPAA that provides more detail regarding Safe Harbor and Expert Determination under the HIPAA standard.

The HIPAA Standard<sup>31</sup> for de-identification of protected health information (PHI)<sup>32</sup> states “Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” If the data are de-identified, and it is not reasonably likely that the data could be re-identified, the Privacy Rule no longer restricts the use or disclosure of the de-identified data.

The following is quoted from the “Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule”, published November, 2012 by the U.S. Department of Health & Human Services, Office for Civil Rights:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/De->

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<sup>31</sup> The Standard is found in the HIPAA Privacy Rule, 45 CFR section 164.514(a).

<sup>32</sup> “PHI” is defined as information which relates to the individual’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual, or for which there is a reasonable basis to believe can be used to identify the individual. (45 CFR section 160.103)



[identification/guidance.html](#)) (Formatting of text may be different than the original document.)

### The HIPAA De-identification Standard

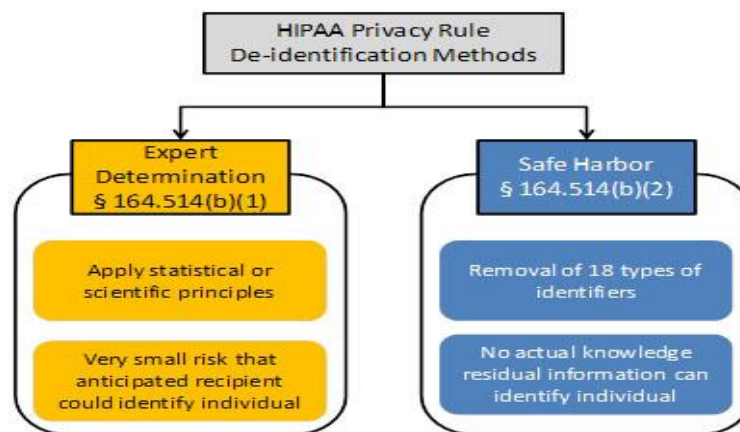
Section 164.514(a) of the HIPAA Privacy Rule (45 CFR) provides the standard for de-identification of protected health information. Under this standard, health information is not individually identifiable if it does not identify an individual and if the covered entity has no reasonable basis to believe it can be used to identify an individual.

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

(a) *Standard: de-identification of protected health information.* Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.

Sections 164.514(b) and(c) of the Privacy Rule contain the implementation specifications that a covered entity must follow to meet the de-identification standard. As summarized in Figure 1, the Privacy Rule provides two methods by which health information can be designated as de-identified.

Figure 1. Two methods to achieve de-identification in accordance with the HIPAA Privacy Rule.



**The first is the “Expert Determination” method:**

(b) *Implementation specifications: requirements for de-identification of protected health information.* A covered entity may determine that health information is not individually identifiable health information only if:

(1) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(i) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(ii) Documents the methods and results of the analysis that justify such determination; or

**The second is the “Safe Harbor” method:**

(2)(i) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names

(B) All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP code, and their equivalent geocodes, except for the initial three digits of the ZIP code if, according to the current publicly available data from the Bureau of the Census:

(1) The geographic unit formed by combining all ZIP codes with the same three initial digits contains more than 20,000 people; and

(2) The initial three digits of a ZIP code for all such geographic units containing 20,000 or fewer people is changed to 000

(C) All elements of dates (except year) for dates that are directly related to an individual, including birth date, admission date, discharge date, death date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older

(D) Telephone numbers

(E) Fax numbers

(F) Email addresses

(G) Social security numbers

(H) Medical record numbers

- (I) Health plan beneficiary numbers
  - (J) Account numbers
  - (K) Certificate/license numbers
  - (L) Vehicle identifiers and serial numbers, including license plate numbers
  - (M) Device identifiers and serial numbers
  - (N) Web Universal Resource Locators (URLs)
  - (O) Internet Protocol (IP) addresses
  - (P) Biometric identifiers, including finger and voice prints
  - (Q) Full-face photographs and any comparable images
  - (R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section [Paragraph (c) is presented below in the section “Re-identification”]; and
- (ii) The covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

Satisfying either method would demonstrate that a covered entity has met the standard in §164.514(a) above. De-identified health information created following these methods is no longer protected by the Privacy Rule because it does not fall within the definition of PHI. Of course, de-identification leads to information loss which may limit the usefulness of the resulting health information in certain circumstances. As described in the forthcoming sections, covered entities may wish to select de-identification strategies that minimize such loss.

#### Re-identification

The implementation specifications further provide direction with respect to re-identification, specifically the assignment of a unique code to the set of de-identified health information to permit re-identification by the covered entity.

*(c) Implementation specifications: re-identification.* A covered entity may assign a code or other means of record identification to allow information de-identified under this section to be re-identified by the covered entity, provided that:

(1) *Derivation*. The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and

(2) *Security*. The covered entity does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

If a covered entity or business associate successfully undertook an effort to identify the subject of de-identified information it maintained, the health information now related to a specific individual would again be protected by the Privacy Rule, as it would meet the definition of PHI. Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified is also considered a disclosure of PHI.

## 12) Abbreviations and Acronyms

CalOHII .....	California Office of Health Information Integrity
CDC .....	Centers for Disease Control and Prevention
CDPH .....	California Department of Public Health
CDSS .....	Department of Social Services
CHHS .....	California Health and Human Services Agency
CMS .....	Centers for Medicare and Medicaid Services
CPHS .....	Committee for the Protection of Human Subjects
DDG .....	Data De-Identification Guidelines
DHCS .....	Department of Health Care Services
HIPAA .....	Health Insurance Portability and Accountability Act
IPA .....	Information Practices Act
MHSOAC ....	Mental Health Services Oversight and Accountability Commission
OSHPD .....	Office of Statewide Health Planning and Development
PAR-DBR ....	Public Aggregate Reporting - DHCS Business Reports
PHI .....	Protected Health Information
PI.....	Personal Information
PRA.....	Public Records Act
PRT.....	Peer Review Team

## 13) Definitions

Aggregate – formed or calculated by the combination of many separate units or items (Oxford Dictionary).

De-identified – generally defined under the HIPAA Privacy Rule (45 CFR section 164.514) as information (1) that does not identify the individual and (2) for which there is no reasonable basis to believe the individual can be identified from it.

Denominator – the portion of the overall population being referenced in a table or a figure representing the total population in terms of which statistical values are expressed (Oxford Dictionary).

Numerator – the number of specific cases as identified by the variable from a given population or the number above the line in a common fraction showing how many of the parts indicated by the denominator are taken (Oxford Dictionary).

Protected Health Information – information which relates to the individual’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual, or for which there is a reasonable basis to believe can be used to identify the individual (HIPAA, 45 CFR section 160.103).

Personal Information – includes information that is maintained by an agency which identifies or describes an individual, including his or her name, social security number, physical description, home address, home telephone number, education, financial matters, email address and medical or employment history. It includes statements made by, or attributed to, the individual (California Civil Code section 1798.3).

Publishable State Data – Data is Publishable State Data if it meets one of the following criteria: (1) data that are public by law such as via the PRA or (2) the data are not prohibited from being released by any laws, regulations, policies, rules, rights, court order, or any other restriction. Data shall not be released if it is highly restricted due to the Health Insurance Portability and Accountability Act (HIPAA), state or federal law (such data are defined as Level 3 later in this handbook).<sup>33</sup>

Re-Identified – matching de-identified, or anonymized, personal information back to the individual.

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<sup>33</sup> <http://chhsopendata.github.io/>

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## 15) Appendix A: Expert Determination Template

HIPAA covered entities in CHHS must de-identify data in compliance with the HIPAA standard. Under the HIPAA standard, either Safe Harbor or Expert Determination must be used. If Expert Determination is used then the documentation of the review is essential. The following may serve as a template for this documentation with the reference to the CHHS DDG to support the analysis documented.

### Documentation of Expert Determination Template

Name of Report:

Reason for Data Release:

Identify why the data release does not meet Safe Harbor. For example:

The request does not meet the Safe Harbor standard because it includes counts by county (geographic area smaller than the state) or counts by month (which does not meet the criteria for dates). Therefore, the steps in the CHHS DDG are being used to assess the tables.

<b>Document how the conditions of each step are met or not met</b>	<b>Result</b>
<u>Step 1 – Presence of Personal Characteristics</u> <i>Summary:</i>	
<u>Step 2 – Numerator Denominator Condition</u> <i>Summary:</i>	
<u>Step 3 – Assess Potential Risk</u> <i>Summary:</i>	
<u>Step 4 – Statistical Masking</u> <i>Summary:</i>	
<u>Step 5 – Expert Review</u> <i>Summary:</i> <i>“Risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information”</i>	

## 16) Appendix B: 2015 HIPAA Reassessment Results

The CalOHII is authorized by state statute to coordinate and monitor HIPAA compliance by all California State entities within the executive branch of government covered or impacted by HIPAA. To help ensure full compliance with HIPAA, CalOHII conducted a reassessment with all State Departments in January 2014 and updated as of July 27, 2015.<sup>34</sup> The following are the self-reported results of this reassessment:

DEPARTMENTS		COVERED ENTITIES					IMPACTED ENTITIES		
		Health Care Provider	Health Care Plan	Health Care Clearinghouse	Hybrid Entity	Business Associate	Trading Partner	Impacted by Data Content	Health Oversight Agency
<b>COVERED ENTITIES &amp; BUSINESS ASSOCIATES</b>									
1	Aging, Department of					X			X
2	Controllers Office, State					X			
3	Corrections and Rehabilitation, CA Dept. of,	X			X				
4	Developmental Services, Dept. of	X		X	X	X	X	X	X
5	Forestry and Fire Protection, Dept. of					X			
6	Health and Human Services Agency					X	X	X	
7	Healthcare Services, Department of		X				X	X	X
8	Justice, Department of					X			
9	Managed Health Care, Dept. of					X			X
10	Public Employees' Retirement System		X		X		X	X	
11	Public Health, Department of	X	X		X			X	X
12	Social Services, Dept. of					X			
13	State Hospitals, Dept. of	X			X	X	X	X	
14	Systems Integration, Office of					X			
15	Veterans Affairs, Dept. of (CalVET)	X			X				
<b>IMPACTED ENTITIES</b>									
1	Health Information Integrity, California Office of								X
2	Health Planning and Development, Office of Statewide							X	
3	Industrial Relations, Dept. of							X	X
4	Insurance, Dept. of								X
5	Inspector General, Office of								X

<sup>34</sup> <http://www.ohi.ca.gov/calohi/download2011-HIPAA%20Assessment%20Results%207-27-2015.pdf>

## 17) Appendix C: State and County Population Projections

The following table is provided for reference related to the race and ethnicity composition at the county level. It is *State of California, Department of Finance, Report P-1 (Race): State and County Population Projections by Race/Ethnicity, 2010-2060*. Sacramento, California, January 2013. The table is for year 2010.

State/ County	Race/Ethnicity							
	Total (All race groups)	White, not Hispanic or Latino	Black, not Hispanic or Latino	Americ an Indian, not Hispani c or Latino	Asian, not Hispanic or Latino	Native Hawaiia n and other Pacific Islander, not Hispanic or Latino	Hispanic or Latino	Multi- Race, not Hispani c or Latino
<b>California</b>	<b>37,309,382</b>	<b>15,024,945</b>	<b>2,188,296</b>	<b>163,040</b>	<b>4,827,438</b>	<b>131,415</b>	<b>14,057,596</b>	<b>916,651</b>
Alameda	1,513,236	514,086	186,737	4,098	395,898	12,337	343,141	56,939
Alpine	1,163	869	0	204	2	0	71	17
Amador	37,853	30,091	950	539	447	53	4,859	913
Butte	219,990	164,870	3,139	3,376	9,458	397	31,670	7,080
Calaveras	45,462	37,999	353	518	526	59	4,779	1,227
Colusa	21,478	8,601	153	284	247	50	11,892	251
Contra Costa	1,052,211	508,220	93,096	3,033	149,853	4,532	256,047	37,431
Del Norte	28,544	18,522	1,060	1,928	933	21	5,126	953
El Dorado	180,921	143,909	1,289	1,543	6,739	248	22,443	4,750
Fresno	932,377	307,295	45,680	6,080	86,637	1,067	469,935	15,682
Glenn	28,143	15,688	181	463	663	17	10,664	467
Humboldt	134,663	103,996	1,404	6,940	3,127	320	13,560	5,316
Imperial	175,389	24,406	5,359	1,639	1,954	75	140,945	1,010
Inyo	18,528	12,309	102	1,895	184	12	3,629	396
Kern	841,146	325,711	45,798	5,933	33,266	996	414,414	15,028
Kings	152,656	54,303	10,686	1,305	5,343	216	77,595	3,208
Lake	64,599	47,973	1,186	1,531	647	81	11,165	2,016
Lassen	35,136	23,452	2,999	992	427	153	6,243	870
Los Angeles	9,824,906	2,746,305	821,829	19,527	1,336,086	23,152	4,694,972	183,035
Madera	151,328	57,494	5,204	1,818	2,661	98	81,807	2,246
Marin	252,731	184,377	7,069	520	14,004	423	39,459	6,879
Mariposa	18,193	15,224	118	456	158	21	1,677	539
Mendocin o	87,924	60,398	544	3,433	1,469	79	19,691	2,310
Merced	255,937	83,475	8,742	1,134	17,363	466	140,472	4,286
Modoc	9,648	7,677	69	280	53	17	1,344	208
Mono	14,240	9,731	36	217	206	9	3,815	226
Monterey	416,259	136,348	11,334	1,372	24,430	1,882	231,700	9,193
Napa	136,811	77,088	2,457	533	9,377	299	44,235	2,823
Nevada	98,639	85,120	331	787	1,295	83	8,703	2,320
Orange	3,017,327	1,336,843	45,894	6,247	540,485	8,507	1,010,752	68,599

State/ County	Race/Ethnicity							
	Total (All race groups)	White, not Hispanic or Latino	Black, not Hispanic or Latino	Americ an Indian, not Hispani c or Latino	Asian, not Hispanic or Latino	Native Hawaiia n and other Pacific Islander, not Hispanic or Latino	Hispanic or Latino	Multi- Race, not Hispani c or Latino
Placer	350,275	263,747	4,448	2,063	22,443	685	46,677	10,214
Plumas	19,911	16,989	173	453	98	14	1,602	581
Riverside	2,191,886	874,405	133,791	10,951	127,558	5,891	993,930	45,361
Sacramen to	1,420,434	691,338	140,694	7,973	200,201	13,795	307,513	58,920
San Benito	55,350	20,573	380	215	1,542	54	31,721	865
San Bernardin o	2,038,523	684,856	172,602	8,660	122,187	5,970	1,003,256	40,991
San Diego	3,102,745	1,501,675	148,728	14,121	333,728	13,606	999,392	91,494
San Francisco	806,254	338,874	46,758	1,808	268,020	3,145	122,869	24,780
San Joaquin	686,588	248,202	49,199	3,220	94,812	3,315	267,086	20,752
San Luis	269,713	191,725	5,392	1,367	8,622	334	56,309	5,965
San Obispo	719,729	303,475	19,474	1,134	178,665	10,225	184,420	22,337
San Mateo	424,050	201,823	7,507	1,817	20,281	675	183,511	8,436
Santa Barbara	1,786,429	627,438	43,926	4,085	573,622	6,413	481,108	49,838
Santa Clara	263,260	156,796	2,357	972	11,260	288	84,804	6,783
Santa Cruz	177,472	145,533	1,429	4,150	4,893	216	15,410	5,841
Shasta	3,230	2,883	4	34	3	2	258	48
Sierra	44,893	35,691	537	1,547	548	58	4,663	1,848
Siskiyou	413,117	170,275	58,396	1,853	59,126	3,304	99,759	20,405
Solano	484,084	321,695	7,009	3,560	17,581	1,404	120,414	12,422
Sonoma	515,205	243,208	12,534	2,894	24,168	3,170	216,228	13,003
Stanislaus	94,669	48,033	1,734	925	13,582	251	27,326	2,818
Sutter	63,487	45,708	347	1,213	548	53	14,010	1,610
Tehama	13,713	11,307	38	536	183	12	1,080	557
Trinity	443,066	145,549	5,505	3,319	13,543	370	269,012	5,767
Tulare	55,144	45,279	1,161	831	546	51	5,950	1,327
Tuolumne	825,077	402,144	13,216	2,363	55,015	1,351	333,230	17,758
Ventura	201,311	100,679	5,025	1,094	26,065	842	61,057	6,549
Yolo	72,329	42,666	2,134	1,260	4,659	256	18,192	3,162
Yuba								

## **Attachment 2: Information to be Redacted**

- A. The identity (name or other identifying information) of a patient if the following information is to be released:
1. Demographic information on the patient;
  2. The patient's past, present, or future physical or mental health or condition;
  3. The provision of health care to a patient;
  4. The past, present, future payment for health care to a patient;
  5. Education;
  6. Financial matters;
  7. Employment history; and
  8. Personal statements attributable to a patient.
- B. Personal information, such as:
1. Home address;
  2. Home telephone or cell phone numbers;
  3. Social Security number; and
  4. Bank account information.
- C. Common identifiers when they can be associated with health or personal information:
1. Name of the patient associated with the personal or health information and the names of his or her relatives, employers, and household members;
  2. Address;
  3. Dates directly related to patient, including DOB, admission or discharge;
  4. Telephone and/or fax numbers;
  5. Driver's License number;
  6. E-mail addresses;
  7. Social Security number;
  8. Medical ID number/CIN;
  9. Health plan beneficiary number;
  10. Account number;
  11. Certificate/license number;
  12. Any vehicle or device serial number, including license plate numbers;
  13. Web Universal Resource Locators (URLs);
  14. Internet Protocol (IP) address numbers;
  15. Biometric identifiers, including finger or voice prints;
  16. Photographic Images (full-face photographs and any comparable images);
  17. Any other unique identifying number characteristic, or code;
  18. Age greater than 89;
  19. Gender, including he/she pronouns, or other sex of gender identifiers; and
  20. Signatures and initials.
- D. Attorney-Client and Attorney Work Product:
1. Shall only be determined by the DSH Legal Division.

SUPERIOR COURT OF CALIFORNIA, COUNTY [REDACTED]

[REDACTED]  
The People of the State of California

vs

[REDACTED] 2021

[REDACTED] M

Honorable [REDACTED] Judge

[REDACTED] Judicial Assistant

[REDACTED], Court  
Reporter(s)

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**NATURE OF PROCEEDINGS:** Placement Recommendation Hearing - CONREP

The following parties are present in Court:

[REDACTED], Defendant  
[REDACTED], Deputy Public Defender  
[REDACTED], Deputy District Attorney (appearing via WebEx)

Defendant is present in court with counsel.

---

The matter is called for hearing.

The Court has read and considered the report submitted by [REDACTED] CONREP, dated [REDACTED] 2021.

The Defendant has been previously found incompetent pursuant to Penal Code Section 1368.

The Court orders the Defendant committed to the Department of Mental Health for placement at the Department of State Hospitals.

The previous medication order issued remains in full force and effect.

Maximum Commitment Date is set at [REDACTED] 2023.

The Court finds the Defendant has 8 days of actual custody credit and 0 days of good time/work time credit for a total of 8 days custody credit, which have not been deducted from the maximum commitment date.

The Defendant is remanded to the custody of the Sheriff's Department for transportation to the treatment program. The Court orders the Sheriff's Department to redeliver the Defendant to court without further order from the Court once they receive notice from the treatment program that the defendant/patient has been restored to competency.

SUPERIOR COURT OF CALIFORNIA, COUNTY [REDACTED]

[REDACTED]  
The People of the State of California

vs  
[REDACTED]

[REDACTED] 2021

[REDACTED] M

The Clerk is ordered to provide the admission packet to the treatment facility where the Defendant has been committed, four court days from this date.

The Department of State Hospitals is ordered to admit the Defendant no later than [REDACTED] 2021, and the Sheriff's Department is ordered to transport the Defendant to the Department of State Hospitals forthwith.

The Court sets a **Hearing re: Status of Bed Availability** on [REDACTED] 2021 at [REDACTED] M in [REDACTED].

[REDACTED] is ordered to appear at the next hearing.

The Director of The Department of State Hospitals or its designee is ordered to prepare and submit a report to this Court on or before [REDACTED] 2021, regarding the status of bed availability.

The Court orders Bail Bond Exonerated.

A copy of this minute order is electronically transmitted in compliance with Code of Civil Procedure Section 1010.6 to:

Department of State Hospitals



ELECTRONICALLY  
FILED

2023

CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF

IN THE MATTER OF  
PEOPLE OF THE STATE OF CALIFORNIA  
(Plaintiff)

v.

(Defendant)

Docket No.

ORDER ISSUING  
SANCTIONS

### Procedural Background

Defendant is in custody pursuant to a felony complaint filed 2023. On 2023, this Court found the defendant incompetent pursuant to Penal Code section 1368, and referred the matter to the County Department of Mental Health Conditional Release Program (CONREP) for a report and recommendation concerning defendant's placement.

The Court and counsel received the report and recommendation from CONREP dated 2023. Based upon the CONREP report, the Court committed the defendant to the Department of State Hospitals (DSH) pursuant to the provisions of California Penal Code § 1370, et seq. The order issued 2023 and stated, on page 1, "Pursuant to the *In re Stiaovetti* Order dated 2021, DSH is ordered to admit the defendant not later than 28 days from the date of this order."

On , 2023, the Court issued an Order to Show Cause to DSH as to why had not been admitted. As of that date, it was reported that the commitment packet had been served on 2023.<sup>1</sup> It was also calculated that was due to be transported by 2023, which was 28 days from the packet service. The Court therefore set a status hearing on 2023 and stated this in the Order to Show

<sup>1</sup> Because this process, like virtually everything else in these proceedings, occurs electronically, it is generally referred to as "packet upload" orally and on minute orders.

Cause.<sup>2</sup> The Order also stated the reasons for the hearing and the relevant procedural history of the case.

On [REDACTED] 2023, the parties, including DSH, appeared. It was reported that [REDACTED] was now number [REDACTED] on the DSH admission waitlist, with an estimated transportation date the week of [REDACTED] 2023. As of the issuance of this order, [REDACTED] has been in local custody for [REDACTED] days after the service of the commitment packet. DSH did not provide explanation of any attempt to provide services to [REDACTED] or to provide *adequate services*.<sup>3</sup>

As his commitment began on [REDACTED] 2023, not only has [REDACTED] lost the benefit of almost two months of treatment, but the People have lost the benefit of that time as counted against his commitment period of two years. Pen. Code § 1370(c)(1); *People v. Carr* (2021) 59 Cal.App.5th 1136, 1144-45.

### **Summary of Decision**

DSH was permitted to explain the reasons for the delay. It submitted a brief noting only objections to service and process.<sup>4</sup> At the hearing, it argued that sanctions should not issue for four reasons: (1) deficiencies in notice and service; (2) good cause and substantial justification, citing to a 2020 decision from the Superior Court in this county discharging an order to show cause in a different matter; (3) ongoing developments in *Stiavetti* as outlined in the briefing in that matter; and (4) DSH budgets. As explained below, each of these explanations or excuses are insufficient to discharge the OSC and sanctions shall issue.

DSH makes several arguments regarding notice and service. As noted above, this is not a contempt proceeding, nor was the Order to Show Cause the product of a party's

<sup>2</sup> Pursuant to *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 721-22, commitment begins when the commitment packet has been served (uploaded), not when DSH considers that packet complete.

<sup>3</sup> Although the legislature has permitted programs such as Jail-Based Competency Training and EASS, the Court finds it highly unlikely that DSH could prove that a jail is an appropriate treatment location, as opposed to a hospital or outpatient setting, such as to alleviate the due process concerns in *Stiavetti* and *Chunn*. Indeed, in comparing Exhibit 1 (DSH-Napa visiting rules) and Exhibit 2 (email regarding Kern AES visiting rules), it is evident the familial support – which is undeniably crucial in the treatment of many mental ill defendants – is much less available at a JBCT program than at a state hospital.

<sup>4</sup> As this is not an indirect contempt proceeding, the heightened standards for service do not apply. Nor is this the type of Order to Show Cause identified in [REDACTED] County Local Rule [REDACTED]. DSH conceded it received notice of the hearing. DSH also did not deny that it had notice.

motion. DSH had adequate notice of this proceeding, as the Court issued a commitment order on [REDACTED] 2023, outlining the potential for a future Order to Show Cause and a written order on [REDACTED] 2023 confirming the hearing date and reasons.

Moreover, DSH could calculate the 28-days ordered by the Court, as it receives the commitment packet. This was certainly more than sufficient to “advise the responding party that the imposition of sanctions is being considered, and to give the party an opportunity prepare for the hearing.” *Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1081. This is not an indirect contempt proceeding, requiring procedures such as service exclusively by certified mail or personal service, affidavits, and willful disobedience.<sup>5</sup> Rather, this is a violation of a direct court order, resulting in sanctions pursuant to Code of Civil Procedure 177.5. DSH has never denied it promptly received the relevant orders, is aware of [REDACTED] status, and has all it needs to admit [REDACTED]

DSH is in violation of this Court’s order, dated [REDACTED] 2023, as well as Defendant’s due process rights as outlined in *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691 and *In re Walter Chunn III* (2022) 86 Cal.App.5th 639. DSH is also in violation of the statewide orders in *Stiavetti* itself. Although DSH notes that *Stiavetti* has delayed implementation of the statewide 28-day rule until February 2024, it was unable to explain why it did not comply with the Court’s order *in this case*. Moreover, *Stiavetti* has phased in the implementation of the order, and DSH remains in violation of *Stiavetti*.<sup>6</sup> Finally, although the trial court in *Stiavetti* may have adjusted implementation of a statewide order in response to concerns from DSH about COVID-19, that practical allowance cannot override the finding – affirmed by the Court of Appeal – that “[c]onstitutional due process requires that DSH must commence substantive services to restore an IST defendant to competency within 28 days of the transfer of responsibility for an IST defendant to DSH.” *Stiavetti*, 65 Cal.App.5th at 704.

<sup>5</sup> Indeed, all requirements missing from the sanctions proceeding in *People v. Handal* (2008) 168 Cal.App.4th 965, 969-70, are present here. The court provided advance notice (rather than an immediate sanction), is providing a written decision containing the reasons for the sanction (rather than a summary oral decision from the bench), and it allowed DSH notice and an opportunity to be heard. An evidentiary hearing is not required. *Seykora*, 232 Cal.App.3d at 1082.

<sup>6</sup> Pursuant to the Amended Judgment dated December 16, 2021, the operative admission timeframe as of February 21, 2023 is 45 days. Although the court in *Stiavetti* is at this moment considering an update to those time frames, there is no indication that (a) the time frames will change substantially or (b) that this justifies the delay in this case. *Stiavetti* specifically notes that “The issue of individual defendants can and should be addressed by the relevant District Attorneys and defense counsel in the relevant counties.” July 27, 2023 Tentative Ruling at 5. DSH is in violation of this statewide deadline in addition to the Court’s order.

There is no satisfactory explanation for [REDACTED] continued confinement in local custody, where [REDACTED] is unable to receive adequate competency services. *See, e.g., People v. Kareem A.* (2020) 46 Cal.App.5th 58 (court rejected DSH's claim that it had "good cause and substantial justification" for its failure to comply because "DSH cannot build new beds overnight"); *People v. Aguirre* (2021) 64 Cal.App.5th 652, 670 ("The responsibility to fix the problem falls squarely on the shoulders of [DSH]. . . . [DSH] continues to violate the Court's orders in a large number of cases each year."). DSH points to three additional sources of "good cause," none of which explains the extensive delay in this case. Notably, in the *People v. Tabitha Jones* Order, 02-327376-0, May 8, 2020, the Court took DSH's promise that the Mental Health Diversion program would provide an "ameliorating effect on the strain placed on DSH from the substantial increase in IST referrals," (Order at 13) and although it still viewed the prospects of relief as speculative, the fact that something was being attempted was sufficient at that time (*notably*, during COVID), to discharge the pending OSC. The Court specifically noted that, without the Mental Health Diversion program, "none of the efforts to increase capacity taken either individually or all together would be sufficient to remedy the substantial increase in IST referrals." Order at 9. In the three years following this Order, the wait list is only slightly smaller and so we can see that Mental Health Diversion has not delivered on the promise. The *Jones* order, while relying on hearings predating COVID-19, was issued in the early months of the pandemic, when the issues were most dire. *Stiavetti*, too, has accounted for COVID and reiterated that DSH must continue to improve and has not done enough, too date. The documents presented to the court in *Stiavetti* seeking to extend the deadlines speak greatly of COVID-related difficulties, but completely ignore that there was a baseline problem pre-dating COVID that remains. Moreover, whether *Stiavetti* ultimately adjusts the timeline for DSH to account for its failures to improve over the years is an entirely separate question from whether DSH has shown good cause here. DSH has not shown good cause for failure to transport [REDACTED] according to this Court's order, even after accounting for *Stiavetti's* statewide timetables.

### **Disposition**

The Court will therefore impose a sanction in the amount of \$1,500 pursuant to Code Civ. Pro. § 177.5 for DSH's violation of this Court's orders and failure to transport [REDACTED] to a DSH facility for competency restoration and treatment in a timely manner. Payment is to be mailed to [REDACTED] County Superior Court, [REDACTED] Street, [REDACTED] CA [REDACTED] or is payable in-person at the Clerk's Office of the same address by [REDACTED] 2023. DSH should be prepared to present proof of payment, upon request of the Court. An additional court appearance may be ordered if DSH fails to provide the Court with proof of payment of this sanction.

The Court shall calendar the matter for further status on [REDACTED], 2023 at [REDACTED] m. in Department [REDACTED] of the Superior Court of [REDACTED] County before Judge [REDACTED]

Dated: [REDACTED]

[REDACTED]

---

**JUDGE OF THE SUPERIOR COURT**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF [REDACTED]  
CERTIFICATE OF SERVICE BY MAIL**

In re [REDACTED]

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in [REDACTED] County, and not a party to the within action; that my business address is Court House, [REDACTED] Street, [REDACTED] California, [REDACTED] that I served the attached **Order Issuing Sanctions** by causing to be placed a true copy thereof in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as below:

DEPARTMENT OF STATE HOSPITALS  
1600 9TH ST RM 433  
SACRAMENTO CA 95814

[REDACTED]

ATTN: [REDACTED]  
OFFICE OF THE DISTRICT ATTORNEY

[REDACTED] ST  
[REDACTED] CA [REDACTED]  
[REDACTED]

ATTN: [REDACTED]  
OFFICE OF THE PUBLIC DEFENDER

[REDACTED] ST  
[REDACTED] CA [REDACTED]  
[REDACTED]

- BY ELECTRONIC MAIL:** I caused said document(s) to be transmitted to the email address(es) of the addressee(s) designated.
- BY FACSIMILE:** I caused said document(s) to be transmitted to the fax numbers(s) of the addressee(s) designated.
- BY REGULAR MAIL:** I caused such envelope to be deposited in the mail at my business address, addressed to the addressee(s) designated. Said envelope was sealed and postage fully prepaid thereon, and thereafter was deposited in the United States mail at [REDACTED] California, on the date shown below; that there is delivery service by the United States Mail between the place of mailing and the place addressed.

I declare under penalty of perjury that the forgoing is true and correct. Executed at [REDACTED] California, on [REDACTED]

[REDACTED], Clerk of the Court  
[REDACTED]  
[REDACTED], Deputy Clerk

# Exhibit 1

# California Department of State Hospitals

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[dsh.ca.gov/Napa/Visitor\\_Information.html](https://dsh.ca.gov/Napa/Visitor_Information.html)

## **DSH-Napa is open for both in-person and tele-visits.**

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Department of State Hospitals is open for in-person visitation. Protocols for in-person visits have been developed based on CDPH and CDC guidance. The below guidelines are implemented in order to keep patients and their visitors safe during the on-going COVID-19 pandemic.

- In-person visitation may be modified or suspended based on the hospital's current COVID-19 conditions or as recommended by CDC, CDPH, and local Public Health Department guidance.
- All patients regardless of vaccination status are permitted to have in-person visits. Televisits will also remain available to all patients.
- The Program 4 Visiting Center is open for Program 4 patient visits.
- Patients with active COVID-19 disease or in quarantine are not permitted to have in-person visitors until release criteria is met.
- Each patient is allowed up to four visitors per visit.
- Consumption of food or drink is allowed per hospital policies. Masks are required when not actively eating or drinking.

### **Scheduling:**

- Times for scheduled visits: 0900, 1000, 1100, 1330, 1430, 1500
- All visits are limited to 45 minutes due to scheduling and infection control measures, with the exception of the 1500 time slot which is limited to 30 minutes.
- In-person visits can be scheduled on Tuesday, Friday, and Saturday for all time slots. On Sunday in-person visits can only be scheduled for the 0900, 1000, 1100 and 1330 time slots.
- Televisits can be scheduled on Monday, Wednesday, and Thursday for all time slots. On Sunday televisits can only be scheduled for the 1430 & 1500 time slots.
- All in-person visits must be scheduled in advance through the following link: [\*\*DSH-Napa Visitation Scheduling\*\*](#).

### **Screening and Testing Protocols:**

- Visitors are asked to arrive at least 10 minutes in advance of their scheduled visit to allow time for screening and check-in.



- **Visitors are screened for COVID-19 including:**
  - **Signs and symptoms of COVID-19**
  - **Close contact with individuals with COVID-19 in the prior 14 days**
  - **Visitors who are screened out will be asked to leave the hospital immediately and reschedule the visit.**
- **We strongly encourage all visitors to be vaccinated, but we do not provide vaccine for visitors.**

**During the Visit:**

- **Visitors and residents wear masks for source control during visitation. The only exception is children under the age of 2. Surgical masks will be provided and required to be worn by visitors at the hospital.**
- **Hand hygiene should be performed by both parties before and after the visit.**
- **Visitors and patients shall maintain social distancing during the visit.**
- **Patients can choose to briefly touch visitors at the beginning and end of each visit while wearing a mask (such as a hug or handshake).**
- **Visitors shall maintain social distancing from other patients and staff.**
- **All other facility policies related to visiting regulations, attire, and allowable items remain in effect.**
- **Infection prevention measures are performed by hospital staff before and after each visit, including cleaning of tables, chairs, commonly touched surfaces, etc.**

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**All visits must be scheduled in advance. There is no walk-in visitation at this time. Please read through and comply with the visitor guidelines before using the scheduling link to reserve your visit.**

**[DSH-Napa Visitation Scheduling](#) (NOTE: best viewed using Chrome, Internet Explorer may not be supported)**

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**[DSH-Napa Visitation Scheduling](#) (NOTE: best viewed using Chrome)**

**General guidelines for tele-visitation with a patient:**

- You will be required to present your ID at the beginning of the web conference. The information provided will need to match what has been submitted, so please fill out the form with your legal name as it appears on your state-issued ID.
- Tele-Visitation will take place daily, with first tele-visit appointment times at 9:30am and last tele-visiting appointment times at 4:30pm each day, with each tele-visit appointment lasting 30-minutes.
- To allow for wider patient access to tele-visitation, patients can only be scheduled for one tele-visit per week.
- Each tele-visit may have one visitor participating from one location.

- Friends and family requesting a tele-visit must confirm they have technology that allows for access to the tele-visit, including connection to the internet, a front facing camera and voice broadcasting ability on their device, and the ability to connect with a WebEx invitation.

## **Technology Requirements to Participate in a WebEx Meeting**

### **Computer:**

- Headphones with microphone (preferred)
- Telephone
- Webcam
- Stable internet connection
- [Computer WebEx Tutorial](#)

### **Mobile Device:**

- WebEx App
- Stable internet connection (Wi-Fi or cellular)
- Headphones with mic (preferred)
- Front facing camera
- [Mobile Smart Phone WebEx Tutorial](#)

## **Scheduling Tele-Visits / Verification Process**

To schedule a tele-visit, please login to Tele-Visitation Scheduling to complete the request form. Tele-Visitation scheduling will be on a first come first serve basis and is subject to change at any time. Incomplete or inaccurate requests will be denied.

### **Additional information:**

- All requests for tele-visiting will be processed by Department of Police Services in the manner similar to in-person visiting. If the visitor is restricted from grounds or has an active warrant, the tele-visit will be denied.
- The Department of Police Services visitor review process will take approximately three calendar days.
- Once approved by the Department of Police Services, and the visit is accepted by the patient, the visitor will receive a confirmation email with tele-visit day, time, and link to the tele-visit.
- Approved visitors will have their identity verified at the beginning of the tele-visit. Only previously approved visitors can participate in the tele-visit and be visible on the screen. No restricted visitor will be allowed to participate. The visitation may be terminated for failure to comply.

- During the visit, the patient and the visitor will be expected to adhere to the same rules and regulations as in-person visits. This includes but is not limited to attire and appropriate behavior. Any misconduct may result in termination of the visit.
- Criminal activity observed during the visit will be processed in accordance with applicable laws.

## Secured Treatment Area

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### Visiting Center - Secured Treatment Area



### Visiting Center – Program 4



### After Hours (4:00 PM - 8:00 AM)



- [Gifts & Donations](#)
- [Additional Information](#)
- [Visitor Information for Judicially Committed / Penal Code Patients \(Programs 1, 2, 3 & 5\)](#)
- [Visiting Days and Hours](#)
- [Visiting for Children](#)
- [Visiting Identification Requirements](#)
- [Visitor Processing](#)
- [Items NOT Allowed on Hospital Grounds](#)
- [Items NOT Allowed During Visits](#)
- [Visitor/Patient Food Privileges](#)
- [Responsibility & Conduct of Visitors/Patients](#)

## Department of State Hospitals – Statewide Contraband List

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In accordance with Welfare & Institutions Code Section 7295, to ensure its safety and security, the Department of State Hospitals has developed a list of items deemed contraband at every state hospital.

**A.** "Contraband" means materials, articles, or goods that patients are prohibited from having in their possession because such materials, articles or goods present a risk to safety and security in the facility.

**B.** Items restricted to use only under supervision or control may be considered contraband for the purposes of this list, as they should not be in patient's possession without supervision. All items that are illegal to possess are by default considered to be contraband, whether specifically contained in this list or not. This includes any items prohibited as a condition of parole as it applies to any patient on active parole while housed in a DSH facility.

#### Statewide and DSH-Napa Contraband List

### **Gifts & Donations**

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Gifts and donations, including money, supplies, equipment, or miscellaneous items are received and registered by the Volunteer Center. A receipt for tax purposes is available upon request. Gifts or donations intended for a specific purpose or patient group will be recorded as such, and used only for that purpose. All other gifts and donations will be used for the benefit of patients, hospital wide, including client activities and special events. If you would like to give a gift/donation, you may contact the Volunteer Services Office at (707) 253-5505.

### **Additional Information**

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#### **Ordering Items for Family, Friend or Loved ones**

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Packages sent to patients must be from a vendor. Packages assembled from home will not be accepted. All incoming packages must come to the hospital through the U.S. Postal Service, or other recognized vendor delivery service. Packages received or sent to and from patients will not be more than 24 inches in length, 19 inches in width and 12 inches high and will not weigh more than 30 pounds. Patients are allowed 8 packages in a quarter (January-March; April-June; July-September; October- December). An order that comes in multiple packages from a vendor will count as one package, only if the sender has submitted a copy of the invoice to the Package Center within two days of placing the order. This invoice may be faxed to [REDACTED] or emailed to the following address:  
[REDACTED]

DSH Napa is currently offering My Care Pack Canteen Services to patients who reside at the hospital as well as to family, friends of loved ones who prefer to use this service to order items for their loved ones. To use this service and to learn more about how it works, please go to [www.mycarepack.com](http://www.mycarepack.com)

#### **Visitor Information for Judicially Committed / Penal Code Patients (Programs 1, 2, 3, 5)**

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It is the policy of Department of State Hospitals - Napa to ensure the right of Patients to receive visitors daily. Patients also have the right to refuse to see visitors.

No more than four (4) visitors per Patient will be allowed at one time, unless prior arrangements and approval has been granted. Visitors will only be allowed to visit one Patient at a time.

Staff shall ensure the health and safety of the Patient, visitors and employees. In addition, staff are responsible for the safety of the unit environment and the continuity of ongoing treatment activities.

Exceptions to this policy may be made by the Medical or Executive Director.

### **Visiting Days and Hours:**

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Family members and friends are encouraged to visit. Regular visiting hours are between 9:00 a.m. and 3:30 p.m. seven days a week and holidays. To arrange for a visit, please contact the social worker or the unit staff in advance of your visit. Individuals participate in scheduled daily activities including therapy and educational programs. With advance notice, we can prevent unnecessary delays in your visit and interruptions in the individual's treatment schedule.

On rare occasions, it may be in the best interest of the patient for the treatment team to limit visiting. Program staff will advise and discuss with the patient's family/friends any such restrictions.

Attorneys and/or their representatives may visit during regular visiting hours (with the exception of weekends and holidays) without an appointment, if they do not require the private attorney room.

Attorneys wishing to conduct a private consultation with a patient must contact the Hospital in advance so that a private room may be reserved.

### **Visiting for Children:**

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Minors may only visit when accompanied by an adult escort and with approval in advance by the Patient's Wellness and Recovery Planning (WRP) Team. The WRP Team approval requires written consent from the parent/guardian to submit a completed Minor Visitation Authorization form. This form can be requested from the Patient's social worker. The form will be kept on file in the Patient's record until the parent/guardian rescinds the consent.

If a minor is an emancipated adult, a certified copy of the court order for emancipation must be provided prior to a visit.

All minors, other than the emancipated minor, must be constantly supervised, accompanied to and from the restroom and remain in the immediate area of their parent(s), legal guardian, or immediate family member.

## **Visiting Identification Requirements:**

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All visitors must register at the Sallyport with the Hospital Police Officers prior to each visit. A Visitor's Information form is to be completed or to be on file. All visitors shall present proof of identity before being permitted to visit. Proof of identification requires a valid driver's license, state issued identification card or official pictured ID such as a passport.

## **Visitor Processing:**

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- All visitors must wear shoes or sandals.
- Visitors must be fully clothed – blouses with skirts, pants or bermuda shorts, or dresses for women; shirts with pants or bermuda shorts for men.
- Visitors may not wear clothing that exposes the breast, back area, genitals, or buttocks.
- Visitors may not wear any sheer or transparent garments.
- Except for religious headgear, visitors may not wear any hats in the Visiting Center.
- For security reasons visitors must not wear clothing that in any way resembles the state-issued clothing or Hospital Police's uniforms (no dark brown or khaki colored clothing).
- It is recommended that all visitors leave their purses and other personal property in their vehicles if possible. If these items are brought to the Visiting Center, they will be placed in a locker and the visitor will retain the key.
- All visitors shall be processed through the metal detector and all property brought into the Visiting Center may be searched by Hospital Police.

## **Items NOT Allowed on Hospital Grounds:**

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**Alcoholic beverages, drugs, poisons, weapons, cameras, recording devices are not allowed on hospital grounds.**

## **Items NOT Allowed During Visits:**

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**The following items will NOT be allowed in the Visiting Center:**

- Battery-operated toys, or toys with metal parts.
- Baby strollers.
- Baby powder or lotion.
- Thermos bottles or open containers containing liquid refreshments.
- Tablecloths.
- Glass utensils or containers.
- Blankets (except baby blankets).
- Faulty or leaky containers.
- No coolers/ice chests.

**Visitors with young children will be permitted to take into the Visiting Center the following items:**

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- Two (2) disposable diapers, per baby.
- Two (2) baby bottles (plastic) of pre-mixed formula, milk, or juice, per baby.
- One (1) change of clothes, per baby.
- One (1) baby blanket, per baby.
- One (1) small noiseless toy, not resembling a weapon, per child.
- Baby carrier.
- Diaper bag or tote for baby items.

**Friends and Family MAY bring the following authorized items with them on their visit:**

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- Approved religious headgear
- A religious medal, bible or religious publications
- Wedding ring
- Prescription glasses
- Handkerchief
- Locker key.
- A maximum of \$10.00 for the vending machines. This can be in the form of bills or coins. Coins cannot be in wrappers.
- Legal papers to conduct business during the course of visit.

**Visitor/Patient Food Privileges:**

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**Visitors MAY bring food to be consumed in the Visiting Center in accordance with the following requirements:**

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Food and drink items may not be taken to the Unit and must be consumed at the Visiting Center.

Food items will be limited to those items that can be carried in one container, outside dimensions not to exceed 13" wide, 19" long and 13" high.

All items brought to the Visiting Center are subject to a thorough visual search by the Hospital Police. Searching will be accomplished as deemed necessary by the assigned HPO staff, to restrict the introduction of contraband into the Visiting Center. All food containers will be opened to assure the contents do not contain contraband. Where questionable items are involved, the duty HPO will positively determine the food items are contraband free. This could include cutting the meats, pies, cakes, etc., or stirring the food items with supplied equipment.

Visitors and patients are restricted to the use of one table only, to both eat and store their food. The joining of an extra table, use of floor, or chairs to store and eat food is not permitted. The sharing of food with other visitors or patients is not permitted.

All visitors and patients consuming foods in the Visiting Center are required to clear, on and around tables, any uneaten foods, crumbs, or trash prior to termination of the visit. Trashcans are provided for the disposal of all trash.

### **Non-allowable items related to the consumption of food**

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- No whole melon-type foods.
- No liquid refreshments other than those available in the Visiting Center.

### **Responsibility & Conduct of Vistors/Patients:**

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**The Patient and his/her visitor will be expected to recognize that the Visiting Center is a public facility and that other Patients, visitors, and families, including those with children, will often be present. Accordingly, Patients and their visitors will also be expected to adhere to the following basic standards of public conduct:**

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- Behavior that is illegal or sexual in nature will not be permitted.
- No tobacco use or smoking is allowed during any visits.
- Other than holding hands during the visit, all other personal contact should not be excessive in duration.
- Visitors or Patients will not be permitted to sit on each other's laps.
- Patients are not allowed to change baby diapers or remove the baby's or minor's clothing for any purpose. All changing of diapers will be in the Visitors Restroom.
- Improper behavior by the Patient or visitor shall result in the immediate termination of the visit and the Patient being returned to the unit.



# Exhibit 2

[REDACTED]

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**From:** [REDACTED]

**Sent:** [REDACTED] 2023 [REDACTED] M

**To:** Department [REDACTED]

**Cc:** [REDACTED]

**Subject:**

Good afternoon, Dept. [REDACTED] and [REDACTED]

I was informed that the Court wanted DSH to look into the visitation policies at [REDACTED] County [REDACTED] Center in [REDACTED] California after a concern was raised by [REDACTED] today regarding grandparents' visit.

I spoke to a Care Coordinator at [REDACTED] County AES Center today who informed me that defendants found IST are permitted to have **either two 30-minute visits per week or one 1-hour visit per week, and all visits must be scheduled for an allotted time frame.**

[REDACTED] grandparents came to visit [REDACTED] on [REDACTED] 2023 and **had reserved a 30-minute visit** since [REDACTED] mother was expected to have a 30-minute visit that day as well. I was informed that the grandparents wanted an hourlong visit when the mother decided to not visit that day after all. However, since only 30 minutes had been reserved, the Sherriff terminated the visit at the 30-minute mark as that was the time reserved.

**Visits are throughout the week, except on Mondays** when no visitation is allowed. The IST defendants are in the [REDACTED] and there are certain hours for visits. On Tuesday through Friday, visitation only occurs in the evenings. A defendant can have an hour visit between 5:30 p.m. and 6:30 p.m. or a 30-minute visit at 6 p.m. or at 7 p.m. On weekends, a defendant can have a 30-minute visit at 11 a.m., an hour visit at 1:30 p.m., and a 30-minute visit at 2 p.m., The same weekday evening visitation rules apply on weekends -- 5:30 p.m. for an hour visit or a 30-minute visit at 6 p.m. or 7 p.m.

Visits restart on [REDACTED] So for instance, if someone visited on [REDACTED] [REDACTED] they could visit the next day on [REDACTED] [REDACTED] but could not visit again until [REDACTED] [REDACTED]

Best,

[REDACTED]  
Attorney

Department of State Hospitals – Legal Division

1215 O Street, MS5

Sacramento, CA 95814

Cell: [REDACTED]

 California Department of  
**State Hospitals**

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF [REDACTED]

PEOPLE )  
 )  
 Plaintiff, )  
 v. )  
 )  
 [REDACTED] )  
 Defendant. )  
 )  
 )

Case No. [REDACTED]  
Event Date: [REDACTED] /2023 [REDACTED] m  
Department: Department [REDACTED]  
Event Type: Review Hearing  
Mtn/OSC:  
Add'l Info: Transportation to State Hospital  
Judge: [REDACTED]  
Clerk: [REDACTED]  
Reporter: [REDACTED]

**Charges:**

- Count 1 PC245(a)(1) Felony
- Count 2 PC245(c) Felony
- Count 3 PC69 Felony
- Count 4 VC2800.2(a) Felony
- Count 5 PC25400(a)(1) Felony
- Count 6 PC24610 Felony
- Count 7 PC148(a)(1) Misdemeanor
- Count 8 PC69 Felony

**Felony - Minutes**

**Appearances:**

District Atty: [REDACTED] is Present.  
[REDACTED] Public Defender for Defendant is present.  
Defendant [REDACTED] Not Present  
Deputy County Counsel: [REDACTED] is present.

**Nature of Proceedings:**

Matter comes on calendar this day for Review Hearing re Transport to State Hospital.

**The Court Finds and Orders:**

The defendant has not yet been transported to the Department of State Hospitals. The defendant does not consent to the administration of antipsychotic medications (PC1370(b)(2)(B)(1)(1). Defendant lacks the capacity to make decisions regarding antipsychotic medication. The Court orders based on the above findings, that the treatment facility, whether a State Hospital or the [REDACTED] County Jail, may administer antipsychotic medication to the defendant involuntarily when and as prescribed by a treating psychiatrist. See order signed and filed this day for further details. This order is good for no more than one (1)

year.

Defense's request for re-evaluation regarding defendant's competency, is Granted. [REDACTED]  
[REDACTED] is appointed to provide a report to the Court.

The Court sets an Order to Show Cause hearing re defendant's transport status.

The matter is set for Hearing: Other - Order to Show Cause on [REDACTED] 2023 [REDACTED] M in  
Department [REDACTED].

Custody Status: [REDACTED] County Jail awaiting transport to DSH.

cc: DSH Workspaces

cc: [REDACTED], Staff Services Analyst - [REDACTED]

cc: Dept. of State Hospitals, Attn: Patient Management Unit, MS-12, 1215 'O' Street,  
Sacramento, CA 95814

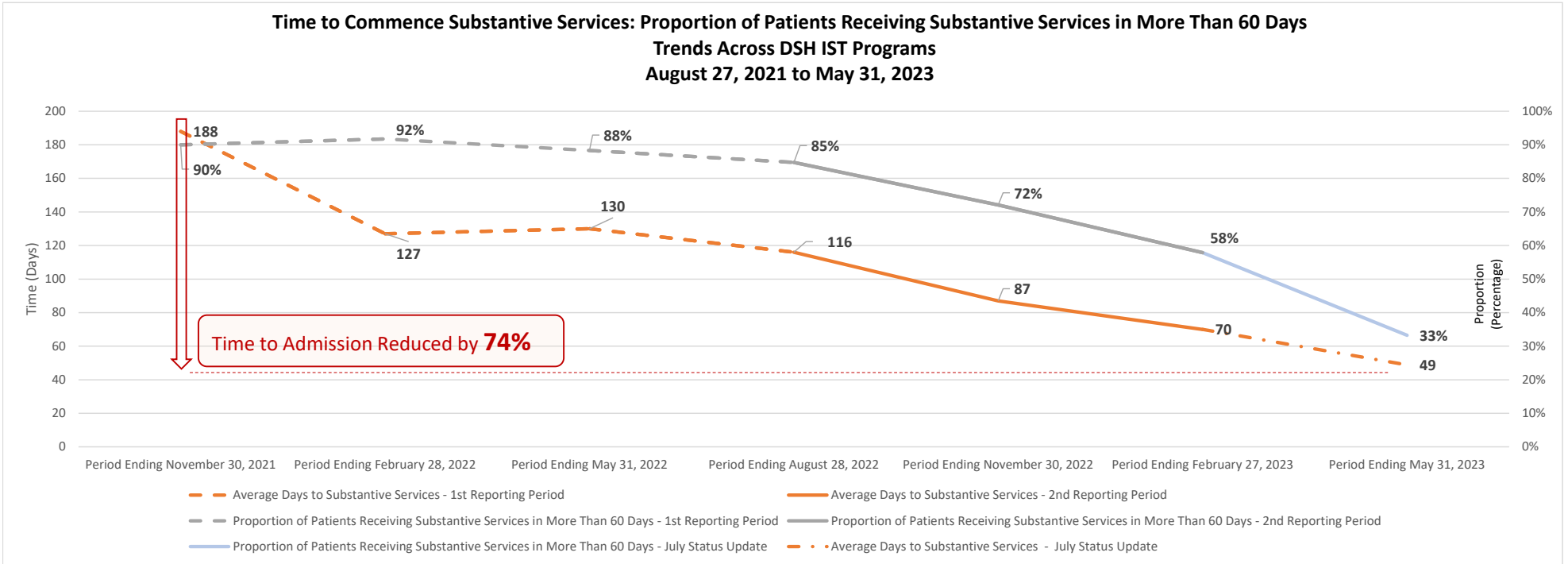
cc: [REDACTED] via email

**DIVISION OF HOSPITAL STRATEGIC PLANNING AND IMPLEMENTATION  
RESEARCH, EVALUATION AND DATA INSIGHTS**



**Program Trend Data**

**Reporting Period: August 28, 2022 to May 31, 2023**



Proportion of Patients Receiving Substantive Services in More Than 60 Days, which was the benchmark as of August 27, 2022, as specified within the *Stiavetti v. Clendenin* judgement.

As of February 27, 2023, the new benchmark to begin substantive services is 45 days.

Calculations exclude patients that have an extenuating circumstance or an applicable exclusion.

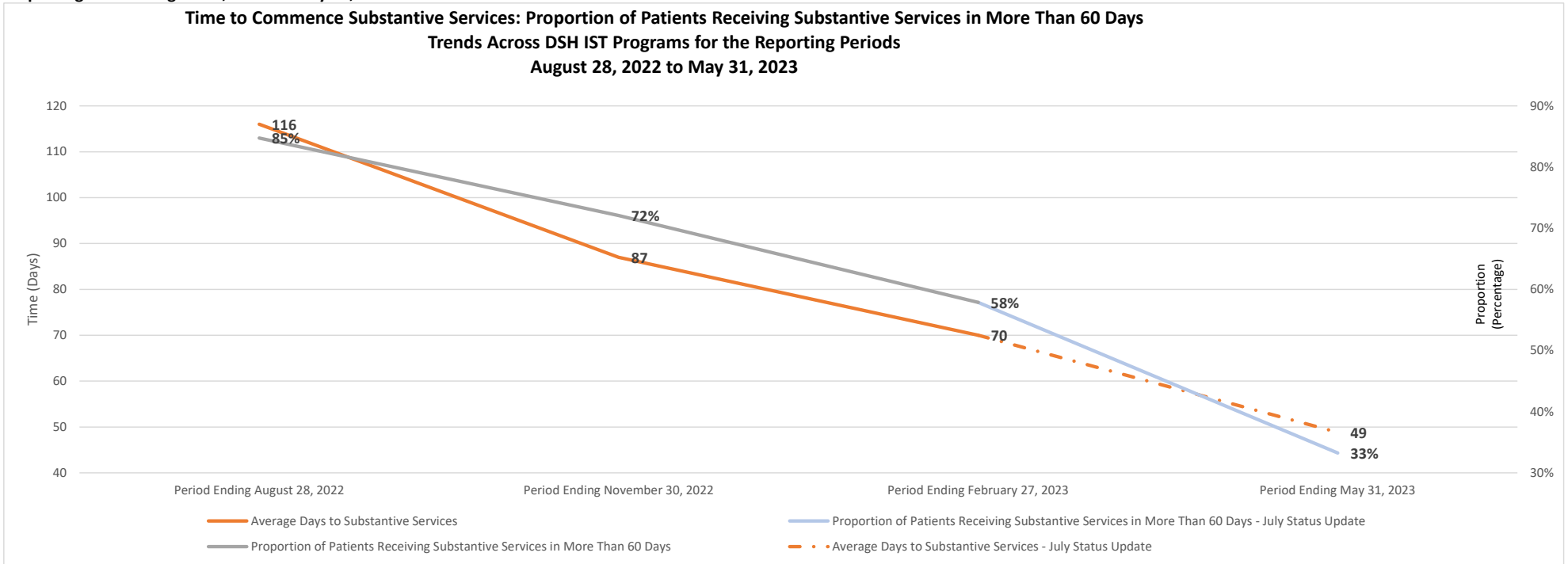
Time to Commence Substantive Services - Proportion of Patients per Range of Days Across DSH IST Programs for the Current and Prior Reporting Periods											
Reporting Periods	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days	Grand Total
August 27, 2021 - November 30, 2021 (Report 1)	3.4%	0.9%	2.7%	3.0%	13.8%	31.1%	25.2%	11.5%	4.5%	3.9%	100%
December 1, 2021 - February 28, 2022 (Report 1)	4.1%	0.9%	0.6%	2.6%	11.1%	24.4%	25.3%	19.2%	7.9%	4.0%	100%
March 1, 2022 - May 31, 2022 (Report 1)	4.3%	0.4%	2.2%	4.8%	12.9%	13.4%	25.2%	18.2%	13.4%	5.1%	100%
June 1, 2022 - August 27, 2022 (Report 1)	4.9%	0.6%	4.9%	4.9%	11.7%	20.5%	30.9%	15.9%	4.7%	1.1%	100%
August 28, 2022 - November 30, 2022 (Report 2)	7.9%	2.4%	7.5%	10.1%	25.5%	24.8%	16.1%	4.4%	1.1%	0.2%	100%
December 1, 2022 - February 27, 2023 (Report 2)	20.6%	3.8%	7.0%	10.6%	26.5%	20.6%	7.5%	2.8%	0.5%	0.2%	100%
March 1, 2023 - May 31, 2023 (Status Update)	33.8%	4.5%	13.5%	15.1%	20.4%	8.5%	2.7%	0.8%	0.3%	0.3%	100%

**DIVISION OF HOSPITAL STRATEGIC PLANNING AND IMPLEMENTATION  
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**Program Trend Data**

**Reporting Period: August 28, 2022 to May 31, 2023**



Proportion of Patients Receiving Substantive Services in More Than 60 Days, which was the benchmark as of August 27, 2022, as specified within the *Stiavetti v. Clendenin* judgement.

As of February 27, 2023, the new benchmark to begin substantive services is 45 days.

Calculations exclude patients that have an extenuating circumstance or an applicable exclusion.

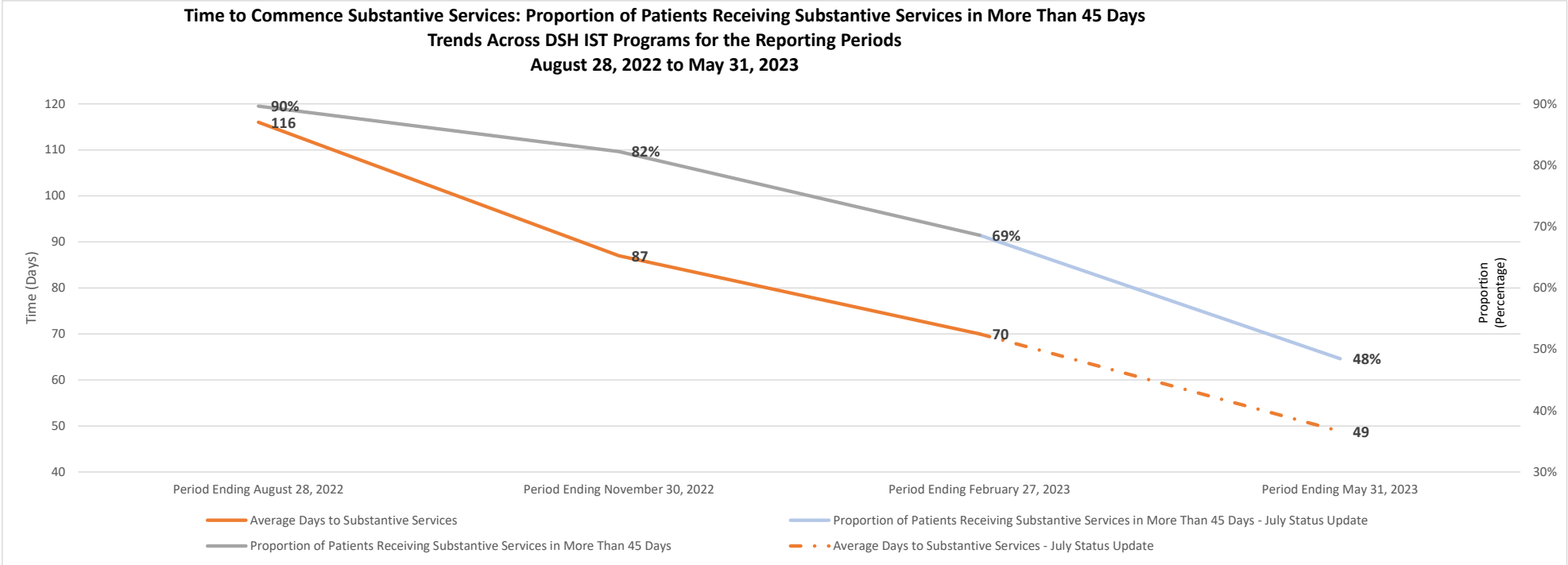
<b>Time to Commence Substantive Services - Proportion of Patients per Range of Days Across DSH IST Programs for the Current Reporting Period - August 28, 2022 to May 31, 2023</b>											
Reporting Periods	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days	Grand Total
August 28, 2022 - November 30, 2022	7.9%	2.4%	7.5%	10.1%	25.5%	24.7%	16.1%	4.4%	1.2%	0.2%	100%
December 1, 2022 - February 27, 2023	20.6%	3.8%	7.0%	10.6%	26.5%	20.6%	7.5%	2.8%	0.5%	0.2%	100%
March 1, 2023 - May 31, 2023 (Status Update)	33.8%	4.5%	13.5%	15.1%	20.4%	8.5%	2.7%	0.8%	0.3%	0.3%	100%

**DIVISION OF HOSPITAL STRATEGIC PLANNING AND IMPLEMENTATION  
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**Program Trend Data**

**Reporting Period: August 28, 2022 to May 31, 2023**



Proportion of Patients Receiving Substantive Services in More Than 45 Days, which is the benchmark as of February 27, 2023, as specified within the *Stiavetti v. Clendenin* judgement. Calculations exclude patients that have an extenuating circumstance or an applicable exclusion.

<b>Time to Commence Substantive Services - Proportion of Patients per Range of Days Across DSH IST Programs for the Current Reporting Period - August 28, 2022 to May 31, 2023</b>											
Reporting Periods	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days	Grand Total
August 28, 2022 - November 30, 2022	7.9%	2.4%	7.5%	10.1%	25.5%	24.7%	16.1%	4.4%	1.2%	0.2%	100%
December 1, 2022 - February 27, 2023	20.6%	3.8%	7.0%	10.6%	26.5%	20.6%	7.5%	2.8%	0.5%	0.2%	100%
March 1, 2023 - May 31, 2023 (Status Update)	33.8%	4.5%	13.5%	15.1%	20.4%	8.5%	2.7%	0.8%	0.3%	0.3%	100%

**DIVISION OF HOSPITAL STRATEGIC PLANNING AND IMPLEMENTATION  
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**Stiavetti Data Metrics**

**Reporting Period: March 1, 2023 to May 31, 2023**

**New Participants, Admissions, and Wait Time Data Metrics by Program Type**

Pre-Admission Treatment Program	Total New Participants	Mean Wait Time	Median Wait Time	Minimum Wait Time	Maximum Wait Time	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days
<b>Early Access and Stabilization Services</b>	462	19	10	0	125	347	***	47	33	20	<11	<11	0	0	0
Admitted into a State Hospital	75														
Admitted into a Jail Based Competency Program	122														
Admitted into a Community Based Restoration Program	0														
Admitted into a Community Based Inpatient Facility	***														
Admitted into Diversion	<11														
LA County Off-Ramp	0														
Found Competent	69														
Found Unlikely to Restore	0														
Pending Placement	169														
Other <sup>1</sup>	<11														

Participant counts and wait time calculations are the number of days from the date the commitment order was received to when the individual began receiving substantive services within the reporting period. Subtotals reflect post-early access treatment outcomes. Program was activated in July 2022.

<sup>1</sup>Other includes vacated commitment orders.

Inpatient Programs	Total Admissions	Mean Wait Time	Median Wait Time	Minimum Wait Time	Maximum Wait Time	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days
State Hospital	610	65	62	2	255	66	31	87	110	198	***	***	<11	<11	<11
Jail Based Competency Program	183	45	40	0	157	***	14	***	***	55	<11	0	<11	0	0
Community Based Facility	21	68	68	9	102	<11	0	<11	<11	11	<11	0	0	0	0
<b>Subtotal</b>	<b>814</b>					<b>130</b>	<b>45</b>	<b>113</b>	<b>138</b>	<b>264</b>	<b>94</b>	<b>***</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>&lt;11</b>

Admission counts and wait time calculations are based on individuals admitted within the reporting period, including patients with received dates preceding March 1, 2023. Patients that already received early access services, have an extenuating circumstance, or applicable exclusions are not included.

Outpatient Programs	Total Admissions	Mean Wait Time	Median Wait Time	Minimum Wait Time	Maximum Wait Time	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days
Diversion <sup>1</sup>	104	94	93	0	251	<11	<11	<11	***	***	***	***	<11	<11	<11
Community Based Restoration	34	85	76	17	170	<11	0	<11	<11	<11	<11	<11	<11	0	0
Conditional Release Program	39	15	0	0	117	***	0	0	<11	<11	<11	0	0	0	0
<b>Subtotal</b>	<b>177</b>					<b>37</b>	<b>&lt;11</b>	<b>14</b>	<b>23</b>	<b>31</b>	<b>40</b>	<b>19</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>&lt;11</b>

Participant counts and wait time calculations are based on the jail release date to the outpatient program within the reporting period, including patients with received dates preceding March 1, 2023. Patients that already received early access services, have an extenuating circumstance, or applicable exclusions are not included.

<sup>1</sup> Wait times reported for Diversion are calculated based on the commitment order received date and the date of entry into a Diversion program. Diversion data for non-Los Angeles counties is not available for reporting period due to statutory data submission timeframes.

Re-evaluation Services	Total New Participants	Mean Wait Time	Median Wait Time	Minimum Wait Time	Maximum Wait Time	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days
LA County Off-Ramps	***	36	27	0	125	***	0	<11	<11	<11	<11	<11	0	0	0
DSH Re-Evaluation Services - Found Competent	111	45	45	21	188	<11	13	***	***	<11	0	0	0	<11	0
DSH Re-Evaluation Services - Unlikely to Restore	<11	191	191	77	306	0	0	0	0	<11	0	0	0	0	<11
<b>Subtotal</b>	<b>138</b>					<b>24</b>	<b>13</b>	<b>41</b>	<b>46</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>0</b>	<b>&lt;11</b>	<b>&lt;11</b>

Participant counts and wait time calculations are based on when the competency report is filed with the court, including patients with received dates preceding March 1, 2023. Patients that already received early access services, have an extenuating circumstance, or applicable exclusions are not included.



Non-DSH COVID Delayed Admissions	Total Admissions	Mean Wait Time	Median Wait Time	Minimum Wait Time	Maximum Wait Time	0-28 Days	29-33 Days	34-45 Days	46-60 Days	61-90 Days	91-120 Days	121-150 Days	151-180 Days	181-210 Days	211+ Days
Cancellation or Delay of Scheduled Admissions Due to COVID-Related Impacts <sup>1</sup>	38	135	139	38	227	0	0	<11	<11	<11	<11	<11	<11	<11	<11
<b>Non-DSH Extenuating Circumstances</b>															
Delay of Critical Records	19	60	45	15	182	<11	0	<11	<11	<11	0	0	<11	<11	0
Medical Circumstances	<11	165	185	39	345	0	0	<11	0	<11	<11	0	0	<11	<11
Out of Custody	15	269	250	63	727	0	0	0	0	<11	<11	<11	0	0	<11
Pending Court Hearings and Proceedings	***	184	151	69	431	0	0	0	0	<11	<11	<11	<11	0	<11
Transportation Related <sup>2</sup>	56	119	96	21	398	<11	<11	<11	<11	***	<11	<11	<11	<11	<11
<b>Subtotal</b>	<b>112</b>					<b>&lt;11</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>&lt;11</b>	<b>19</b>	<b>16</b>	<b>&lt;11</b>	<b>11</b>	<b>&lt;11</b>	<b>23</b>
<b>Other Admissions</b>															
<b>Total Other Admissions</b>	<b>Total Other Admissions</b>	<b>Mean Wait Time</b>	<b>Median Wait Time</b>	<b>Minimum Wait Time</b>	<b>Maximum Wait Time</b>	<b>0-28 Days</b>	<b>29-33 Days</b>	<b>34-45 Days</b>	<b>46-60 Days</b>	<b>61-90 Days</b>	<b>91-120 Days</b>	<b>121-150 Days</b>	<b>151-180 Days</b>	<b>181-210 Days</b>	<b>211+ Days</b>
Program Transfers and Re-Commitments <sup>3</sup>	172														
<b>Subtotal</b>	<b>172</b>														

Individuals reported with extenuating circumstances or exclusions are those that received substantive services within the reporting period, including patients with referral received dates preceding March 1, 2023.

<sup>1</sup> Includes non-DSH COVID delayed admissions impacted by COVID medical or COVID testing circumstances. This includes cancellation or delay of a scheduled admission due to patient's jail housing unit being placed on COVID-19 quarantine, patient being placed on COVID-19 quarantine or isolation in jail, COVID-19 testing not completed by the jail, or COVID-19 testing results not received by DSH from the jail.

<sup>2</sup> Includes extenuating circumstances impacted by county transportation schedule and/or patient refused transportation.

<sup>3</sup> Transfers includes patients that previously received substantive services in a DSH program but subsequently transferred back to a State Hospital, Jail Based Competency Treatment Program, or a Community Inpatient Based Facility due to needing continued treatment, or not maintaining program requirements.

Admission and Participant Totals	
Total Admissions	1,141
Total New Participants	600
Total Program Transfers & Re-commitments	172
<b>Grand Total</b>	<b>1,913</b>

Pending Placement List (PPL)	
PPL Date	Total on PPL
March 27, 2023	1,016
May 29, 2023	936

Pending Placement List detail as of the last Monday of the reporting month.

Total New Referrals	1,522
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Referrals include all ISTs initially committed to DSH or a DSH-funded program. Excludes any administrative errors, duplicate records, transfers, court returns, or admissions into California Department of Corrections and Rehabilitation - Salinas Valley Psychiatric Program.

DSH Systemwide IST Census		
DSH Program	March 1, 2023	May 31, 2023
Early Access and Stabilization Services	197	172
State Hospital	1,672	1,815
Jail Based Competency Program	386	352
Community Based Facility	60	68
Diversion	232	303
Community Based Restoration	393	372
Conditional Release Program	39	64
<b>Grand Total</b>	<b>2,979</b>	<b>3,146</b>

Data has been de-identified in accordance with the Department of State Hospitals Data De-identification Guidelines. Values are aggregated and masked to protect confidentiality of the individuals summarized in the data. Counts between 1-10 are masked with "<11". Complimentary masking is applied using "\*\*\*\*" where further de-identification is needed to prevent the ability of calculating the de-identified number.

**DIVISION OF HOSPITAL STRATEGIC PLANNING AND IMPLEMENTATION  
RESEARCH, EVALUATION AND DATA INSIGHTS**



**Summary of Quarterly Data by Program Type  
Reporting Period: March 1, 2023 to May 31, 2023**

	Pre-Admission Treatment Programs					Inpatient Programs					Outpatient Programs					Re-evaluation Services			
	Total New Participants	Mean Wait Time	Median Wait Time	Beginning Census	Ending Census	Total Admissions	Mean Wait Time	Median Wait Time	Beginning Census	Ending Census	Total Admissions	Mean Wait Time	Median Wait Time	Beginning Census	Ending Census	Total New Participants	Mean Wait Time	Median Wait Time	Census
Quarter 1 <sup>A</sup>	305	52	46	22	116	1,009	96	98	1,652	2,011	141	105	106	645	661	193	85	80	N/A
Quarter 2 <sup>B</sup>	405	32	26	113	198	634	90	90	2,011	2,112	124	103	101	660	663	152	62	59	N/A
Quarter 3 <sup>C</sup>	462	19	10	197	172	814	61	57	2,118	2,235	177	75	75	664	739	138	46	43	N/A
Quarter 4																			
Annual																			

<sup>A</sup> Reporting Period August 28, 2022 to November 30, 2022.

<sup>B</sup> Reporting Period December 1, 2022 to February 27, 2023.

<sup>C</sup> July Status Update includes March 1, 2023 to May 31, 2023.

	Pre-Admission Treatment Program					Inpatient Program					Outpatient Program					Re-evaluation Services				
	Q1 <sup>A</sup>	Q2 <sup>B</sup>	Q3 <sup>C</sup>	Q4	Annual	Q1 <sup>A</sup>	Q2 <sup>B</sup>	Q3 <sup>C</sup>	Q4	Annual	Q1 <sup>A</sup>	Q2 <sup>B</sup>	Q3 <sup>C</sup>	Q4	Annual	Q1 <sup>A</sup>	Q2 <sup>B</sup>	Q3 <sup>C</sup>	Q4	Annual
0-28 Days	77	228	347			39	33	130			***	<11	37			<11	<11	24		
29-33 Days	22	34	***			***	<11	45			<11	0	<11			<11	<11	13		
34-45 Days	51	50	47			59	26	113			<11	<11	14			<11	***	41		
46-60 Days	52	29	33			90	43	138			<11	<11	23			19	64	46		
61-90 Days	70	55	20			232	206	264			23	38	31			95	49	<11		
91-120 Days	***	<11	<11			303	218	94			40	37	40			***	<11	<11		
121-150 Days	<11	<11	<11			209	75	***			29	14	19			***	<11	<11		
151-180 Days	<11	0	0			***	***	<11			17	19	<11			<11	0	0		
181-210 Days	<11	0	0			<11	<11	<11			<11	<11	<11			0	0	<11		
211+ Days	<11	0	0			<11	<11	<11			0	<11	<11			<11	0	<11		

<sup>A</sup> Reporting Period August 28, 2022 to November 30, 2022.

<sup>B</sup> Reporting Period December 1, 2022 to February 27, 2023.

<sup>C</sup> July Status Update includes March 1, 2023 to May 31, 2023.

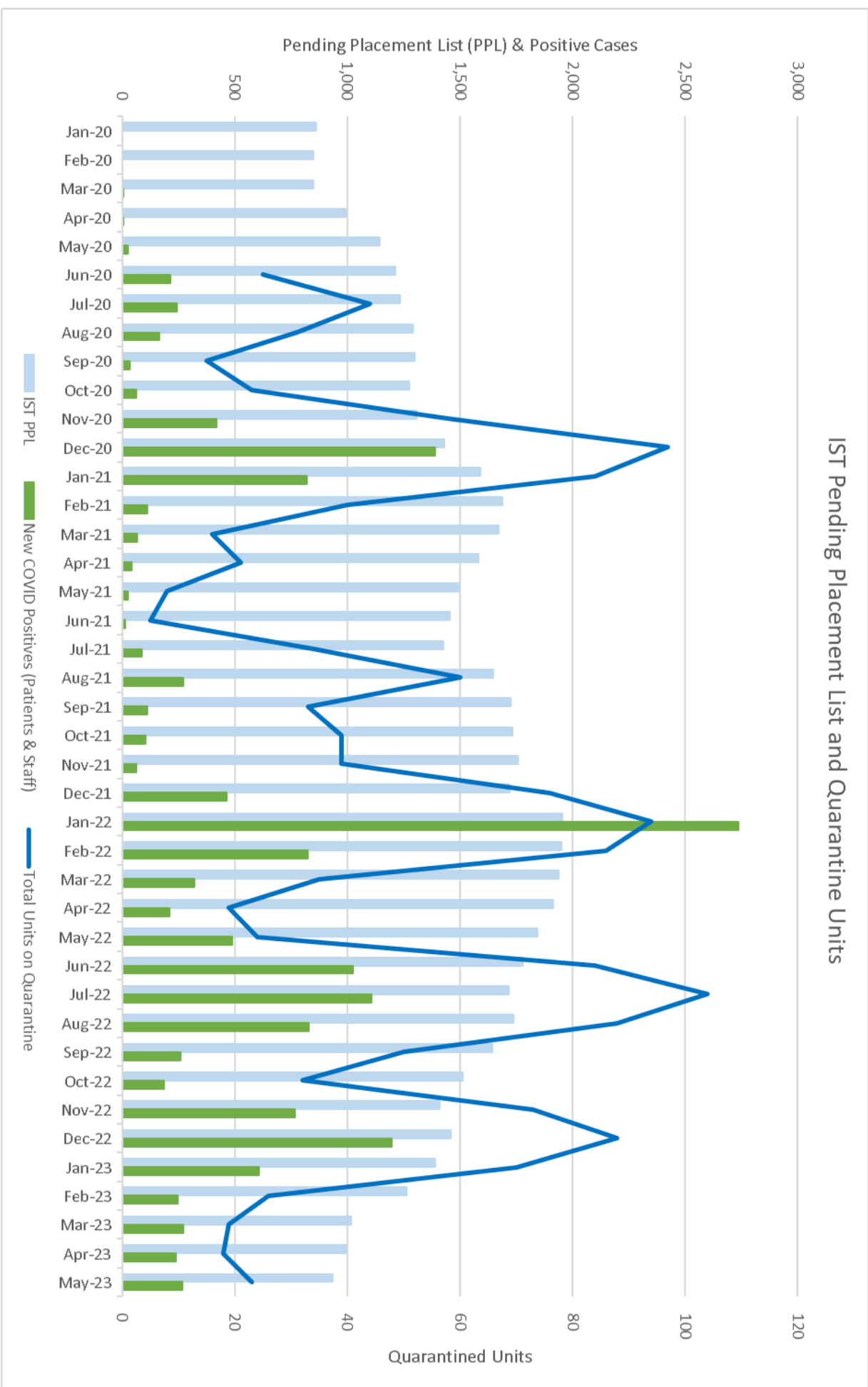
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**IST Pending Placement List and COVID-19 Data**  
**Reporting Period: January 2020 to May 2023**



IST Pending Placement List and Quarantine Units



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**Report Definitions**

DSH IST Programs	Definition
Early Access - Stabilization Services	DSH contracts with county and private providers to provide substantive services including mental health services, psychiatric stabilization, and competency restoration services to felony incompetent to stand trial (IST) defendants while the individual is in jail pending placement to a State Hospital, Jail Based Competency Program, Diversion or Community Based Program or facility.
State Hospitals	DSH's inpatient mental health hospital system provides clinical, medical, and competency restoration treatment services to IST defendants housed at Atascadero, Metropolitan, Napa, and Patton State Hospitals.
Jail Based Competency Program	DSH contracts with a number of California counties, through the local Sheriffs' Offices, to provide restoration of competency services to felony IST patients housed in county jail facilities. These services are provided by the county's chosen mental health provider. The JBCTs are responsible for assessment for competency and malingering, cognitive screenings, re-assessment of competency, and completion and submission of all court reports. Services provided to IST patients include daily clinical contact, group and individual therapy, competency education materials, and clinical support through interdisciplinary teams.
Community Based Facility	DSH's Institutions for Mental Diseases (IMDs)/Sub-Acute program contracts with a community based locked, in-patient facilities including IMDs, Mental Health Rehabilitation Centers, and acute psychiatric hospitals where individuals deemed incompetent to stand trial receive substantive services in lieu of admission to a State Hospital or JBCT program.
Diversion	DSH Mental Health Diversion contracts with county-operated programs that allow felony IST defendants with certain serious mental illnesses to participate in intensive community-based mental health treatment. Services include housing, wrap-around supports, and medical evaluation and management with the goal of long-term mental health treatment engagement and connection to services. Criminal charges are dropped for individuals who successfully complete the program. Participating counties are required to connect individuals who successfully complete this program into ongoing community mental health care programs.

DSH IST Programs	Definition
Community Based Restoration	DSH contracts with counties to operate Community Based Restoration programs where felony IST defendants from the contracted county can receive competency restoration services in a community treatment settings in lieu of a State Hospital or JBCT program.
Forensic Conditional Release Program	CONREP is DSH's statewide system of community-based services for specified court-ordered forensic individuals. DSH contracts with county and private providers to provide community-based treatment services for individuals committed to DSH, under various commitment types, who have been approved by the court for outpatient treatment in lieu of state hospital placement or for individuals approved by the courts to step down from state hospital treatment to the community. CONREP serves felony incompetent to stand trial patients who have been court-approved for outpatient placement in lieu of State Hospital placement.
DSH Re-Evaluation Services	DSH's Re-Evaluation Program (WIC 4335.2) utilizes expert forensic evaluators to re-evaluate an IST defendant's competency status after the individual has been ordered to DSH and is pending admission to a DSH IST Program and determine if the individual needs to continue into an IST treatment program or is competent or has no substantial likelihood to be restored and should be returned to court. If at the time of the evaluation the individual appears to be a candidate for Diversion or outpatient treatment, it makes the recommendation for this consideration.

Metrics	Definition
Mean Wait Time	The mean value is the sum of IST defendant wait times to substantive services by program divided by the count of IST defendants.
Median Wait Time	The median is the middle value in the IST defendant wait times to substantive services distribution by program.
Minimum Wait Time	The minimum is the lowest value in the IST defendant wait times to substantive services or treatment distribution by program.
Maximum Wait Time	The maximum is the highest value in the IST defendant wait times to substantive services or treatment distribution by program.
Wait Time Categories	The count of IST defendant wait times to substantive services that are within the defined wait time range per category.

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**Non-DSH Extenuating Circumstances and Exclusions**

**Non-DSH Extenuating Circumstance:** *An external or special circumstance that significantly impacts the commencement of substantive services outside of DSH's standard process.*

Non-DSH Extenuating Circumstances	Definition
County Transportation Schedule	Committing county is unable to transport patient for admission on scheduled admission date.
COVID Medical	Referred patient's scheduled admission date was delayed because of jail facility's COVID-19 quarantine or isolation requirements for individual.
COVID Testing	Referred patient's scheduled admission date was delayed because COVID-19 testing was not completed by the jail or results not received from the jail within 24 hours of scheduled admission date.
Medical Circumstances	Referred patient has a medical condition requiring external treatment prior to admission. Medical condition cannot be treated within a State Hospital.
Delay of Critical Records	Critical documents for referred patient was not received from the courts to allow for timely admission. Critical documents include medical, criminal history information, and commitment orders.
Out of Custody	Referred patient has been released from custody while awaiting court proceedings and treatment.
Patient Refused Transport	Referred patient refuses transportation on scheduled admission date.
Pending Court Hearing and Proceedings	Referred patient has an ongoing 1) Diversion or 2) Re-Evaluation court hearing and/or other court proceeding impacting their commitment status.

**Exclusions:** *A patient referral excluded from average wait-time calculations due to:*

- 1) receipt of substantive services provided through a DSH Program, or*
- 2) meeting the criteria of an Extenuating or Special Circumstance.*

Exclusion	Definition
DSH Program Transfers	Patients receiving treatment within a DSH IST program who are transferred to another DSH IST program for continued treatment, e.g. patients needing higher level of care due to mental health treatment needs or not meeting court ordered terms and conditions for outpatient treatment, patients transferred from Jail Based Competency Program to a State Hospital for longer term treatment needs.
Re-Commitment	Patients returning for additional treatment with the same commitment order.

## Emilia Garcia

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**From:** Tan, Jonathan@DSH-S <Jonathan.Tan@dsh.ca.gov>  
**Sent:** Friday, January 12, 2024 4:43 PM  
**To:** Emi MacLean; Rezvanpoor, Niloofar@DSH-S; Kent, Kristopher@DSH-S  
**Cc:** Emilia Garcia  
**Subject:** RE: PRA R230262-091423, final agency determination

Ms. MacLean,

This email is in response to your email inquiry dated from January 4, 2024, regarding Public Records Act, (PRA), request R230262.

R230262, was first submitted to the California Department of State Hospitals, (DSH), on September 14, 2023, while this was only one submission, this PRA contained a total of 4 requests for specific and unique data/records, each with several sub-requests, as follows: Request 1 contained 2 sub-requests plus 6 additional requests for unique patient identifying information and records. Request 2 contained 4 sub-requests plus 15 additional requests for information. Whereas request 3 contained 3 sub-requests plus an additional 8 additional requests for information and records. Lastly, request 4, while only containing 3 sub-requests, sought all Court Records received by DSH for IST patients over a 3-month time span, such a request entails a significant sum of records numbering in the hundreds if not thousands. In sum, this PRA request requires reconciling a total of approximately 39 data points in order to provide a complete response.

On October 16, 2023, DSH conducted a video conference meeting through Microsoft teams with you to discuss Requests 1 and 4. DSH identified numerous patient privacy issues which would prohibit the disclosure of patient sensitive data and records as you had requested. DSH inquired if the ACLU would consider withdrawing request number 4 because of this and on October 24, 2023, DSH provided, via email, a sampling of what redacted Court orders for IST commitments, OSC's and Sanctions would look like once all redactions were applied. On or about, December 6, 2023, DSH received an email from you indicating that the ACLU would not be withdrawing request number 4 from this PRA.

On November 6, 2023, DSH provided all responsive records and information within its possession for request one and two in its first rolling response.

On December 22, 2023, DSH provided its second rolling response for this PRA, which included over 200 pages of responsive records pertaining to request number 4. Today, DSH provided its third rolling response, which contains another large quantity of responsive records for request 4.

DSH has not produced a response with respect to Request 3 and is continuing to evaluate the request to determine whether it possesses responsive records. The request specifically seeks all patient data for a period of approximately 8 months from the time this PRA was submitted to DSH, which relates to hundreds if not thousands of patients. DSH has diligently worked to compile and release responsive records for Requests 1 and 2 and continues to prepare responsive records for Request 4, which necessitate significant investments of time to retrieve the responsive records and then complete all required redactions.

Once DSH concludes production of responsive records for Response 4, it will provide a rolling response with any responsive records in its possession for Request 3. DSH estimates it will fully complete its response within the next 60 days. It should be noted that since Request R230262 has been received, DSH has received three

additional PRA requests from you, for which it has continued to provide rolling responses: R230272, R230301, and R230323.

The staff assigned to pull responsive records and compile responses are the same staff assigned to the instant request. The Department has and will continue to diligently compile and respond to your PRA requests as it is able.

Should you wish to speak further about this matter, please don't hesitate to contact our office.

Thank you.

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**From:** Emi MacLean <EMacLean@aclunc.org>  
**Sent:** Thursday, January 4, 2024 11:59 AM  
**To:** Rezvanpoor, Niloofar@DSH-S <Niloofar.Rezvanpoor@dsh.ca.gov>; Kent, Kristopher@DSH-S <Kristopher.Kent@dsh.ca.gov>; Tan, Jonathan@DSH-S <Jonathan.Tan@dsh.ca.gov>  
**Cc:** Emilia Garcia <EMGarcia@aclunc.org>  
**Subject:** PRA R230262-091423, final agency determination

**[EXTERNAL E-MAIL]**

Counsel,

We received your December 22, 2023 letter regarding our September 14, 2023 CPRA request via the DSH portal. We understand that DSH is asserting that it has provided complete responses to all of the items in Request R230262-091423 except for two sub-items in 3. To be clear, these are requesting only the following:

- 3b requests data and/or documents sufficient to show: The duration of time *after IST commitment* which EASS participants received the outcomes listed in 3(a)(i)-(viii) (e.g., time after IST commitment when an EASS participant was admitted to a state hospital).
- 3c requests data and/or documents sufficient to show: The duration of time *after EASS enrollment* which EASS participants received the outcomes listed in 3(a)(i)-(viii) (e.g., time after IST commitment when an EASS participant was admitted to a state hospital).

There is no 3d; that bullet item appeared due to a formatting error only.

We understand that 3b and 3c are the only outstanding items remaining in this request. Given the limited scope of these requests, we do not understand the cause for delay and the need for rolling production. Moreover, the CPRA's limits for issuing a determination with regards to this request have long past; the statute allows only a single 14-day extension.

Please provide a final, complete determination as to what records will be released without further delay, along with an estimated date for when you anticipate producing all remaining records.

Best,  
Emi

HP #P dfOndq#  
Vhqlru#Wdiid#wrugh|#  
DFOX #c#Q ruKhug#F ddiru1d#  
<5<#5:8#48:8#  
vkh2kh#



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**From:** Emilia Garcia

**Sent:** Tuesday, October 17, 2023 1:13 PM

**To:** [Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov); [Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov); Rezvanpoor, Niloofar@DSH-S  
<[Niloofar.Rezvanpoor@dsh.ca.gov](mailto:Niloofar.Rezvanpoor@dsh.ca.gov)>; Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>

**Subject:** PRA R230262-091423, communication regarding production of responsive documents.

Dear Mr. Kent, Ms. Rezvanpoor, and Mr. Tan,

Thank you for your communication yesterday, October 16, 2023, regarding Request No. R230262-091423. You identified that you have completed review of requests 1, 2, and 3 and anticipate prompt production of any responsive nonexempt records shortly. You also identified that you will provide a formal response to those requests, to the extent that the agency will not produce responsive records, as well as to request 4 (seeking specific court records).

In light of the fact that the agency asserts that it must heavily redact responsive court records, in response to request 4, we request a sample of the redacted records rather than rolling production, along with an explanation of the agency's justification for any redactions. We believe it most fruitful and efficient to resolve any concerns about the propriety of the redactions prior to any rolling production of redacted responsive records. Therefore, in lieu of a rolling response, we request that you kindly produce a sample of the three most recent court orders in DSH's possession for each of the following subcategories identified in our request 4: a) Orders to show cause for failing to admit or provide competency restoration treatment to individuals deemed IST in a timely manner; b) Orders for sanctions against DSH for failing to admit or provide competency restoration treatment to individuals deemed IST in a timely manner, and; c) Orders committing individuals deemed IST to DSH custody for competency restoration treatment.

Thank you in advance,

Emilia Garcia



**Emilia Garcia | she/her/hers**  
Investigator  
ACLU of Northern California  
916.824.3258 | [emgarcia@aclunc.org](mailto:emgarcia@aclunc.org)

**From:** [Tan, Jonathan@DSH-S](mailto:Tan.Jonathan@DSH-S)  
**To:** [Emi MacLean](mailto:Emi.MacLean); [Kent, Kristopher@DSH-S](mailto:Kent.Kristopher@DSH-S); [Reden, Brent@DSH-S](mailto:Reden.Brent@DSH-S); [August, Amy@DSH-S](mailto:August.Amy@DSH-S)  
**Cc:** [Shaila Nathu](mailto:Shaila.Nathu)  
**Subject:** RE: PRA R230262-091423, Request to Meet and Confer  
**Date:** Thursday, March 14, 2024 2:58:38 PM  
**Attachments:** [image001.png](#)

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Ms. MacLean,

The California Department of State Hospitals, (DSH), provides the following responses to your inquiry email regarding PRA R230262 dated from Tuesday, March 5, 2024.

1. DSH utilizes multiple unique and standalone databases in the course of providing treatment and services to its patient population. These unique and standalone databases vary depending on the services it tracks for each course of treatment provided by DSH. For example, patients receiving competency restoration treatment through the Early Access to Stabilization Services, (EASS), program are tracked through the EASS database, whereas patients who receive treatment through DSH's Jail Based Competency Treatment Program, (JBCT), are tracked through the JBCT database. The primary purpose of these databases is to confirm patient treatment, not for general data compilation or tracking.

As of now, each program for which you requested information and records for within requests 2 and 3 of this PRA are tracked using their own unique and stand-alone database, furthermore each of these databases contain unique and sensitive data which can only be extrapolated through the creation of an entirely new record, which is not required under the Public Records Act.

Additionally, at this time, none of these databases are linked and as such cannot be easily cross referenced with one another. DSH is working on building a database tracking system which will keep track of all treatment provided to its patients through all programs and allow for data compilation, however that system is in the early stages of development and there is no definitive timeline for when it will be implemented.

2. Pursuant to the ruling by the court in the Stivetti litigation, DSH is ordered to "extrapolate", "aggregate" and "analyze" data from each of its patient treatment databases and produce regular "status updates" for the Court and public. DSH is required to comply with this court order and compiles information from each database for each status update filed with the court.

While the Stivetti order requires this process, the Public Records Act does not. Under the Public Records Act, the statute itself and court precedent have clearly stated that a department such as DSH is not required to create new records when responding to a PRA request. (See *Sander v Superior Court* (2018) 26 Cal.App.5th 651.)

DSH will continue to provide its Court-ordered status reports as mandated in Stivetti and will continue to make said reports available to the ACLU as well as the public.

3. DSH's ongoing commitment is to provide the best mental health treatment it can for its

patient population in as rapid a timeframe as logistically feasible. As part of its efforts to achieve this, DSH recently developed and implemented new treatment programs such as EASS, JBCT, Diversion, etc.

In an effort to prioritize the development of these treatment programs, DSH implemented basic tracking systems utilizing the databases described above. Now that these programs are in place, DSH is working towards creating a comprehensive database, which, upon completion, will be utilized as the method of tracking and storing all program treatment progress as well as the treatment progress of each patient undergoing treatment through one or several of DSH's treatment programs.

However, until this master database is created and implemented, DSH will continue to track its program treatment progress and the patient's progress through its current system of multiple, unlinked, standalone and unique databases.

4. As previously stated in its first rolling response for this PRA, DSH was notified that from January 2018 to the present date in which this PRA was submitted to DSH, approximately 35 individuals have been removed from the IST waitlist due to death. DSH does not maintain information for individuals who die outside of DSH custody. Instead, DSH may learn of the death of IST patients waiting for admission into a DSH program to the extent in which it impacts admission or placement, such as cancelled transportation or the Court's discharge of a commitment order.

To the extent that DSH may have individual records that may contain responsive information, DSH is prohibited by law from releasing individual patient information you requested pursuant to laws that include the following: Federal Health Insurance Portability and Accountability Act, (HIPPA), specifically Title 45, Code of Federal Regulation section 164.500 and California Welfare and Institutions Code section 5328.

Lastly, please note that since approximately July of 2023, DSH has received a total of 8 PRA requests from you and your colleagues. Each of these PRAs contained multiple requests for records which DSH has diligently responded to while ensuring that the privacy rights of its patients remained protected. To date, DSH has provided a total of approximately 3,448 pages of responsive records for all PRA requests submitted by you and your colleagues since July 2023, which includes 1,328 records produced in the instant request. DSH continues to work towards providing additional rolling responses in as timely a manner as possible.

Furthermore, regarding PRA R230262, as of today, DSH has conducted two meet and confer meetings with you and exchanged dozens of emails. During this course of communication, DSH has provided you with redacted samples of the responsive records you requested in this PRA, explaining and showing you that after redactions of patient sensitive data were complete the resulting records had limited value. These meet and confer efforts were driven by the goal of ensuring DSH produced information of value in a timely manner. At each juncture, you have declined the invitation to reduce the scope or number of your requests. Thus, the Department must coordinate the workflow of the limited number of staff and attorneys it has assigned to these requests and continues to diligently work to respond to these requests as promptly as is feasible. Moreover, the filing of PRA requests by you and your colleagues does not reduce the existing responsibilities and duties of our staff members, nor does it allow DSH to bring on additional staff to meet the demands created by your repeated PRA requests.

As such, the history of PRA requests filed by you and the amount of records produced thus far by DSH demonstrates DSH has and is continuing to produce all responsive records it has within its possession to you in as timely a manner as possible, while also ensuring that the privacy rights of its patients remain a top most and protected concern.

Should you wish to speak further on this please don't hesitate to reach out and we can schedule another meet and confer.

Thank you.

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**From:** Emi MacLean <EMacLean@aclunc.org>

**Sent:** Thursday, March 7, 2024 4:54 PM

**To:** Tan, Jonathan@DSH-S <Jonathan.Tan@dsh.ca.gov>; Kent, Kristopher@DSH-S <Kristopher.Kent@dsh.ca.gov>; Reden, Brent@DSH-S <Brent.Reden@dsh.ca.gov>; August, Amy@DSH-S <Amy.August@dsh.ca.gov>

**Cc:** Emilia Garcia <EMGarcia@aclunc.org>; Shaila Nathu <SNathu@aclunc.org>

**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

**[EXTERNAL E-MAIL]**

Thank you, and we look forward to your response.

All the best,

Emi

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**From:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>

**Sent:** Thursday, March 7, 2024 4:53 PM

**To:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>; Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Reden, Brent@DSH-S <[Brent.Reden@dsh.ca.gov](mailto:Brent.Reden@dsh.ca.gov)>; August, Amy@DSH-S <[Amy.August@dsh.ca.gov](mailto:Amy.August@dsh.ca.gov)>

**Cc:** Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>; Shaila Nathu <[SNathu@aclunc.org](mailto:SNathu@aclunc.org)>

**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

Ms. MacLean,

Good afternoon, DSH is in receipt of your email dated from Tuesday, March 5, 2024, in regard to PRA R230262 and the questions you raised as well as your request for a meeting.

DSH is in the process of preparing a list of responses to the questions raised in your email. We expect to produce our response to you during the week of March 11, 2024. Once our responses are provided, if you feel that a further meet and confer regarding this PRA would be helpful, DSH will be happy to attend.

Thank you and have a pleasant day.

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**From:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>

**Sent:** Tuesday, March 5, 2024 4:19 PM

**To:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>; Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Reden, Brent@DSH-S <[Brent.Reden@dsh.ca.gov](mailto:Brent.Reden@dsh.ca.gov)>; August, Amy@DSH-S <[Amy.August@dsh.ca.gov](mailto:Amy.August@dsh.ca.gov)>

**Cc:** Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>; Shaila Nathu <[SNathu@aclunc.org](mailto:SNathu@aclunc.org)>

**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

## [EXTERNAL E-MAIL]

Counsel:

In light of the assertions in your February 26 communication that DSH lacks records responsive to portions of Requests 2 and 3 of our September 14, 2023 public records request (Records Request Number R230262), and your November 6, 2023 correspondence responding to Request 1 of the same request, we request certain information consistent with the agency's obligations pursuant to Government Code, section 7922.600.

In response to portions of Requests 2 and 3, which seek certain data related to individuals deemed Incompetent to Stand Trial ("IST"), you "determined [DSH] does not possess any [responsive] records," and that responding to these requests would require the "extrapolat[ion] and aggregat[ion] of] numerous volumes of records and data across multiple, unlinked databases, which would constitute the creation of a new record and fall beyond the authority and purview of the Public Records Act." (Feb. 26, 2024 DSH Correspondence.)

In response to Request 1, which seeks anonymized data in the possession of DSH regarding the deaths of individuals on the IST waitlist, you determined that "[t]he Department has been notified that from January 2018 [until September 2023] approximately thirty-five, (35), individual [*sic*] who have been removed from the IST waitlist due to death." But you provided no further responsive information beyond that, asserting that such disclosure would constitute the prohibited release of private patient information. (Nov. 6, 2023 DSH Correspondence.)

As you know, a government agency must (1) "[a]ssist" in the identification of records or refining of the request; and (2) "[p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought. (Government Code, § 7922.600 subds. (a) and (b).)

We therefore request that DSH:

1. Describe the "multiple, unlinked databases" which have records and data responsive to Requests 2 and 3, and what specific categories of responsive records and data are in each of the databases;
2. Describe how DSH was able to extrapolate, aggregate and analyze the data from these databases to produce the aggregate data in the publicly available "status update" reports DSH files in response to the *Stiavetti* court order referenced in Footnote 2 of our PRA request;

3. Describe the practical obstacles to extrapolating and aggregating the records and data from these databases to produce the responsive records we seek in Requests 2 and 3 of our September 14, 2023 PRA request, and how we might overcome these obstacles; and
4. Describe the responsive information DSH has in response to Request 1(b) (seeking anonymized data about people who died while on the waitlist), the source of the responsive information, whether any of the responsive data or other information is included in databases, and whether any of the responsive data or other information is included in records that could be redacted to overcome DSH's concerns regarding the disclosure of private patient information.

Moreover, we note that you were required to make a determination as to whether you possessed disclosable records within 24 days after our request. (Government Code, § 7922.535.) You are only now telling us – more than five months after our request – that you don't have responsive records to these categories of Requests 2 and 3 of the request. If you have any justification for this extensive delay, only to ultimately assert the lack of any producible records in response to these portions of the request, please let us know.

We request that you please respond by **March 19**, consistent with your obligations under Government Code § 7922.600, subds. (a) and (b), and in light of the extensive delay already. We are also available to meet to discuss the information that is collected, maintained or accessible through your databases, and how to overcome the barriers to production of records extracted from these databases or other responsive records currently being withheld, if you are available on the afternoons of March 8, 12, 13 or 14.

Best,

Emi

Emi MacLean (she/her)  
Senior Staff Attorney  
ACLU of Northern California  
929 375 1575 (cell)

---

**From:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>

**Sent:** Thursday, February 22, 2024 5:28 PM

**To:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>; Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Reden, Brent@DSH-S <[Brent.Reden@dsh.ca.gov](mailto:Brent.Reden@dsh.ca.gov)>; August, Amy@DSH-S <[Amy.August@dsh.ca.gov](mailto:Amy.August@dsh.ca.gov)>

**Cc:** Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>; Shaila Nathu <[SNathu@aclunc.org](mailto:SNathu@aclunc.org)>

**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

Ms. MacLean,

DSH is in receipt of your email dated Thursday, February 22, 2024 regarding your PRA request, R230262-091423 and provides the following response to the issues raised by you.

During our January 25, 2024, conference call you made DSH aware of your desire to prioritize requests from categories 2 and 3 within this PRA request. Following that meeting, on February 9, 2024, DSH provided its fourth rolling response for this PRA, which was well underway at the time of our January discussion. Presently, DSH is in the process of completing its fifth rolling response for this PRA, which will address categories 2 and 3. We anticipate transmitting this fifth rolling response the week of February 26.

In regard to your position that DSH is improperly withholding information within Court Orders relevant to category 4 records of this PRA, please note that DSH is a health care provider and as such is bound by higher standards of privacy than other agencies. As we have previously relayed, we are unlike other public entities you may have worked with on other issues, such as District Attorney Offices and Courts, in that we are governed by the Health Insurance Portability and Accountability Act, (HIPAA), the Information Practices Act (IPA) (Civ. Code, § 1798, et. seq.), and the more restrictive privacy provisions under the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5328, et. seq.). Your recent email references all of these governing authorities but provides no controlling law or case precedent to support and buttress your position that DSH does not need to perform the redactions and deidentification it has. To the extent you have authority you believe confirms your position, kindly provide it so that we can review and consider.

DSH understands and respects the Public Record Act's emphasis on transparency, but must also work to ensure that the privacy rights of those committed to its care are steadfastly protected. As such, DSH implements and utilizes policies and procedures to comply with the data de-identification requirements set forth in HIPAA, the LPS Act, and the IPA whenever personal patient information is requested by members of the public, such as in this PRA. All records produced by DSH thus far pursuant to the requests set forth in this PRA have been in accordance with the governing rules of HIPAA, the IPA, and the LPS Act.

Thank you.

---

**From:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>

**Sent:** Thursday, February 22, 2024 10:24 AM

**To:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>; Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Reden, Brent@DSH-S <[Brent.Reden@dsh.ca.gov](mailto:Brent.Reden@dsh.ca.gov)>

**Cc:** Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>; Shaila Nathu <[SNathu@aclunc.org](mailto:SNathu@aclunc.org)>

**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

## **[EXTERNAL E-MAIL]**

Counsel:

I am following up on our September 14, 2023 PRA request (Request 230262-091423) seeking records related to DSH's Incompetent to Stand Trial ("IST") waitlist and DSH's provision of restoration services to IST patients, specifically 1) information concerning the deaths of individuals deemed IST over the past five years ("Category 1"); 2) information to substantiate and explain the outcomes, and wait times for programming or treatment, for individuals deemed IST included in the

publicly filed status reports (“Category 2”); 3) information about the outcomes of participants in Early Access and Stabilization Services (“EASS”) (“Category 3”); and 4) commitment orders and orders to show cause provided by Superior Courts across the state (“Category 4”) (the “Request”).

**Category 3(b) & (c) records**

On January 25, 2024, we spoke with and emailed your office to request that you prioritize production of records in response to Category 3 and pause review and production of records in response to Category 4. This reiterated a request we previously made by email on October 17, 2023 for a sample of Category 4 records in light of your assertion that heavy review and redaction was necessary. Yet, nearly one month after this January 2024 communication, and five months since our Request, we have received no records in response to Category 3(b) and 3(c).

Nonetheless, on February 9, 2024, we received further redacted productions in response to Category 4. We thus again reiterate our request that DSH provide a substantive response to Category 3 of our Request and pause further production of records responsive to Category 4 to facilitate the production of records responsive to Category 3(b) & 3(c).

**Category 1 & 4 records**

As stated in our January 25, 2024 email, we remain interested in receiving the unredacted court orders responsive to Category 4. However, we disagree that DSH is properly withholding information in the court orders responsive to Category 4 to protect privacy interests pursuant to Government Code, section 7927.700, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Information Practices Act (Civ. Code, § 1798, et. seq.) and the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5328, et. seq.) We also disagree with your assertion that these provisions bar disclosure of records responsive to Category 1’s request for anonymized information about individuals who were removed from the IST waitlist due to death. DSH has produced *no* information in response to the request for Category 1 records beyond a bare number of people (35) who DSH knows have been removed from the IST waitlist due to death from January 2018 through September 14, 2023. Neither Category 1 nor Category 4 seeks protected health information.

**Category 2 (and 3(a)) records**

In our January 25, 2024 correspondence, we requested confirmation as to whether DSH intends to produce the responsive foundational data requested in Category 2, and a written explanation for DSH’s determination to withhold these records if DSH does not intend to produce them. This portion of the request seeks *underlying documents and anonymized, individualized data* that DSH used to create the summary data that is publicly available in the Status Updates filed with the Superior Court in *Stiavetti v. Clendenin*, No. RG15779731 (Exhibit A), which are referenced in Footnote 2 of our CPRA request. We have not yet received any response to this request for confirmation or further production. However, your February 9, 2024 correspondence states that, with regard to Categories 2 and 3(a), “[a]ll responsive records and information within the Department’s possession for this request were product in the first rolling response.” We thus contest the completeness of this production.

Best,

Emi



Emi MacLean (she/her)  
Senior Staff Attorney  
ACLU of Northern California  
929 375 1575 (cell)

---

**From:** Emi MacLean  
**Sent:** Thursday, January 25, 2024 4:00 PM  
**To:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>  
**Cc:** Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>;  
Shaila Nathu <[SNathu@aclunc.org](mailto:SNathu@aclunc.org)>  
**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

Dear Mr. Tan,

Thank you for your time this afternoon regarding our PRA request R230262.

As stated in our call, we request that DSH prioritizes its production in response to Request 3 and pauses its review and production in response to Request 4. You noted in our call that there are approximately 1,400 more orders that would have to go through the same redaction process DSH has undertaken with regard to a sample set of court orders. We appreciate the sample production of court orders and are still interested in receiving the information responsive to Request 4. However, we disagree with the redactions in the orders and do not believe they comply with the CPRA. In light of that, we are amenable to a pause in further production at this time while we evaluate our options. Please note that this does not constitute a withdrawal of Request 4. Given that the DSH has asserted that it will only provide a response to Request 3 “once DSH concludes production of responsive records for [Request] 4,” we hope that this allows DSH to prioritize its response to Request 3.

We also confirmed in our call that Request 2 seeks the *underlying documents and anonymized, individualized data* that DSH used to create the summary data that is publicly available in the Status Updates filed with the Superior Court in *Stiavetti v. Clendenin*, No. RG15779731 (Exhibit A), which are referenced in Footnote 2 of our CPRA request. The only documents DSH has produced in response to Request 2 are publicly available status reports filed in *Stiavetti*. We do not believe those are responsive to our request for the underlying sources of information that DSH relied upon in order to produce those records. We seek data and related records which show how DSH arrived at the figures included in these public status reports. Please confirm whether DSH intends to produce the responsive foundational data pertaining to the summary documents provided. If DSH does not intend to produce those records, please provide a written explanation for DSH’s determination to withhold those records.

We understand that you identified you are only tasked to respond to Request 4, but that you would communicate the contents of our call to those responding to other portions of our request. Please do not hesitate to reach out to us if any further discussion would be helpful in your efforts to respond to this request.

With appreciation,  
Emi MacLean

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Emi MacLean  
Senior Staff Attorney  
ACLU of Northern California  
929 375 1575  
she/her

**From:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>  
**Sent:** Thursday, January 25, 2024 8:32 AM  
**To:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>  
**Cc:** Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>  
**Subject:** RE: PRA R230262-091423, Request to Meet and Confer

Hi Ms. MacLean,

230pm today is perfect, I'll send a teams invite right now to everyone on this email thread.

Thank you.

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**From:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>  
**Sent:** Thursday, January 25, 2024 7:59 AM  
**To:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>  
**Cc:** Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>; Emilia Garcia <[EMGarcia@aclunc.org](mailto:EMGarcia@aclunc.org)>  
**Subject:** Re: PRA R230262-091423, Request to Meet and Confer

**[EXTERNAL E-MAIL]**

Thank you for your message, Mr. Tan. Would today at 230 or 3 work for you?

Best,

Emi

Emi MacLean  
Senior Staff Attorney  
ACLU of Northern California

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**From:** Tan, Jonathan@DSH-S <[Jonathan.Tan@dsh.ca.gov](mailto:Jonathan.Tan@dsh.ca.gov)>  
**Sent:** Wednesday, January 24, 2024 11:37:48 AM  
**To:** Emi MacLean <[EMacLean@aclunc.org](mailto:EMacLean@aclunc.org)>  
**Cc:** Kent, Kristopher@DSH-S <[Kristopher.Kent@dsh.ca.gov](mailto:Kristopher.Kent@dsh.ca.gov)>  
**Subject:** PRA R230262-091423, Request to Meet and Confer

Ms. MacLean,

Good morning, this is Jonathan Tan from DSH Legal.

I was wondering if you may have some time to conduct a quick teams call regarding PRA R230262-091432 sometime this week?

The department would like to have a short discussion with you regarding some of the requests within this PRA.

Please let me know a time and date which is convenient for you and I'll schedule a teams call for us, if you'd like me to include anyone else from your office on the call please send me their names and emails as well.

Thank you.

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