COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

VACANT
First District

JOEL ANDERSON
Second District

TERRA LAWSON-REMER
Third District

MONICA MONTGOMERY STEPPE
Fourth District

JIM DESMOND
Fifth District

DATE: **January 28, 2025** **20**

TO: Board of Supervisors

SUBJECT

AUTHORIZE ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION INFRASTRUCTURE PROJECT GRANT FUNDS (DISTRICTS: ALL)

OVERVIEW

The California Department of State Hospitals (DSH) is making funding available to counties to locally serve individuals charged with a felony offense who are found Incompetent to Stand Trial (IST). This includes funding for local infrastructure, as well as funding for local diversion and community-based restoration programming to reduce the number of IST findings through upstream prevention before custody or diversion and to reduce the number of individuals with serious mental illness arrested and incarcerated for behavior connected to their illness.

The *IST Diversion and Community-Based Restoration Infrastructure Project* grant (IST Infrastructure Grant) will provide funding for capital infrastructure to serve individuals who have been charged with a felony, deemed IST, and who are identified by DSH as eligible for diversion or community-based services. With letters of support from the San Diego Superior Court, Public Defender's Office, District Attorney's Office, and the County of San Diego (County) Chief Administrative Officer (CAO), the County applied for the maximum allocation of up to $21,375,000 for Fiscal Years 2024-25 through 2027-28.

On August 29, 2024, DSH notified the County of a preliminary award for the full amount. With today's action, and any requisite approvals by DSH and other regulatory bodies, the County will utilize funds for facility renovations to convert existing psychiatric acute inpatient beds within the San Diego County Psychiatric Hospital (SDCPH) to specialized long-term care beds for patients deemed felony IST. Today's item requests the San Diego County Board of Supervisors to authorize acceptance of one-time IST Infrastructure Grant funds of up to $21,375,000.

This item supports the County vision of a just, sustainable, and resilient future for all, specifically those communities and populations in San Diego County that have been historically left behind, as well as our ongoing commitment to the regional *Live Well San Diego* vision of healthy, safe, and thriving communities by implementing new services that are designed to improve outcomes for persons with serious mental illness who are involved with the criminal justice system.

SUBJECT: AUTHORIZE ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION INFRASTRUCTURE PROJECT GRANT FUNDS (DISTRICTS: ALL)

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER
Authorize the acceptance of one-time Incompetent to Stand Trial (IST) Diversion and Community-Based Restoration Infrastructure Project grant funding of up to $21,375,000 from the California Department of State Hospitals (DSH) for Fiscal Years 2024-25 through 2027-28, for facility improvement costs to establish capital infrastructure to serve individuals identified as IST on felony charges, and authorize the Chief Administrative Officer, or designee, to execute all required documents, upon receipt, including any annual extensions, amendments, or revisions that do not materially impact or alter the services or funding level.

EQUITY IMPACT STATEMENT
Individuals who are justice-involved frequently experience barriers that impact their ability to successfully navigate systems of care and the justice system. Nationwide, systemic issues such as poverty, lack of education, inadequate access to healthcare, unsafe neighborhoods, and insufficient social support contribute to disproportionately high rates of crime, arrests, and incarceration among Black, Indigenous, and People of Color, as well as individuals of a lower socioeconomic status who are struggling with mental health or substance use challenges or experiencing homelessness. It is anticipated that the funding associated with the Incompetent to Stand Trial Diversion and Community-Based Restoration Infrastructure Project grant will have a positive impact on these populations by enhancing access to community-based mental health and diversion programming.

SUSTAINABILITY IMPACT STATEMENT
Today's actions support the County of San Diego's (County) Sustainability Goal #2 to provide just and equitable access to County services by addressing barriers that disproportionately affect justice-involved individuals, particularly Black, Indigenous, and People of Color populations and those experiencing homelessness, mental health, or substance use conditions.

FISCAL IMPACT
Funds for the Incompetent to Stand Trial Diversion and Community-Based Restoration Infrastructure Project grant are not included in the Fiscal Year (FY) 2024-25 Operational Plan in the Health and Human Services Agency. If approved, this request is anticipated to result in no costs and revenue in FY 2024-25 and one-time estimated costs and revenue of $21.4 million in FYs 2025-26 through 2027-28 for facility improvements which will be included in future Operational Plans. The funding source is State General Funds from the California Department of State Hospitals. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT
N/A

ADVISORY BOARD STATEMENT
On November 7, 2024, the Behavioral Health Advisory Board voted to approve the recommended action related to Incompetent to Stand Trial (IST) infrastructure grant funding. Additional information on IST funding streams will be shared as an informational item at upcoming Behavioral Health Advisory Board meetings.

SUBJECT: AUTHORIZE ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION INFRASTRUCTURE PROJECT GRANT FUNDS (DISTRICTS: ALL)

BACKGROUND

California has continued to see a significant increase in individuals charged with a felony offense who are found Incompetent to Stand Trial (IST) and committed to the Department of State Hospitals (DSH) for competency restoration services. A person deemed IST by the court is unable to participate in their trial due to their inability to understand the criminal proceedings or assist their counsel in their defense. They may receive clinical and medical services through DSH to support restoration of their competency and enable them to return to court. The focus of treatment for the IST population is restoration of trial competency, not the person's long-term mental health treatment.

Once their immediate mental health issues and medication needs are addressed, they receive information on various aspects of court proceedings, what they are charged with, available pleas, elements of a plea bargain, role of evidence, and constitutional protections. Knowledge of these areas is assessed using a competency assessment instrument. The person's competency to stand trial may be reevaluated at any time and if the person is deemed competent, a forensic report is sent to the court outlining that the patient is ready to stand trial. A majority of felony ISTs are people experiencing homelessness who have not accessed any Medi-Cal mental health services in months prior to their arrest, and who often cycle in and out of the criminal justice system.

In response to the increasing number of individuals with serious mental illness (SMI) who become justice-involved and deemed IST on felony charges, the State of California (State) has made investments to increase DSH's capacity. However, the growth has continued to outpace available capacity resulting in waitlists and increased wait times to admission.

The State established a statewide IST Solutions Workgroup in 2021 in response to a 2015 lawsuit against DSH due to the amount of time IST defendants were waiting for admission into a DSH treatment program alleging violations of individuals' due process rights. The workgroup is comprised of appointed representatives from State agencies, the Judicial Council, local government and criminal justice system representatives, and representatives of IST patients and their family members. This workgroup identified strategies to address the increasing number of individuals with SMI who become justice-involved and deemed IST on felony charges. These strategies included providing funding to implement local solutions to reduce the number of individuals with serious mental illness prior to arrest and incarceration for behavior connected to their illness.

The 2022 State Budget Act appropriated DSH $535.5 million in Fiscal Year (FY) 2022-23 and $638.0 million ongoing by FY 2025-26 to implement solutions, inclusive of early stabilization and care coordination, expansion of community-based treatment and diversion options. The intent is to reduce the number of IST findings through upstream behavioral health prevention efforts, improvement of IST discharge planning and coordination, and implementation of a pilot for independent placement panels. To implement the enhanced services, new and updated statutory language was enacted in budget trailer bill Senate Bill (SB) 184.

SUBJECT: AUTHORIZE ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION INFRASTRUCTURE PROJECT GRANT FUNDS (DISTRICTS: ALL)

IST Diversion and Community-Based Restoration Infrastructure Project Grant
On March 1, 2023, DSH released Round 1 of non-competitive funding for the IST Infrastructure Grant. This opportunity provides one-time grant funding to counties to increase the State's capacity of residential treatment homes and facilities for people who have been charged with a felony, deemed IST, and who are identified by DSH as eligible for diversion or community-based services. The $468.8 million in total funding is anticipated to create up to 5,000 beds statewide by allowing counties to acquire or rehabilitate property and purchase the furniture and minor equipment needed for occupancy.

In June 2024, the County of San Diego (County) applied for the maximum allowable IST Infrastructure Grant fund award of up to $21,375,000 in funding to establish specialized capital infrastructure to serve those deemed IST, subject to the final approval of DSH. On August 29, 2024, DSH notified the County of a preliminary award for the full amount, pending the County's execution of a program funding agreement and submission of a project application.

The IST Infrastructure Grant will be utilized for part of the renovation costs to convert a portion of the existing psychiatric acute inpatient beds within the San Diego County Psychiatric Hospital (SDCPH) to include specialized long-term care beds for patients deemed IST. The new IST beds will provide critical services with the objective of restoring competency for individuals with SMI. The need for additional long-term care beds paired with the reduction in inpatient admissions within the SDCPH resulting from the diversion to crisis stabilization units has allowed the County a strategic opportunity to shift the services within SDCPH to more effectively support the long-term care needs of beneficiaries with complex needs in our region, including people with justice involvement. All funds must be expended by June 30, 2028.

Today's item requests the San Diego County Board of Supervisors (Board) to authorize acceptance of one-time *IST Diversion and Community-Based Restoration Infrastructure Project* grant (IST Infrastructure Grant) funds.

Forthcoming IST Funding Opportunities
DSH has put forward additional funding opportunities to support community-based restoration (CBR) and Diversion programming, which will be provided to counties upon execution of contracts with DSH. In October and November 2024, DSH notified the County that up to $37,562,000 of IST Diversion Program funding and up to $37,562,000 of IST Community-Based Restoration (CBR) Program funding, respectively, would be awarded for FY 2024-25 through FY 2028-29 to serve individuals determined to be felony IST. Funding for both CBR and Diversion can be used for program implementation, wrap around services, administrative overhead, justice partner funding, violence risk assessment, and diversion court liaison functions. The County Health and Human Services Agency, Probation, Public Defender, Sheriff, and District Attorney will collaborate on how that funding could be used.

Current law allows a court to divert eligible felony IST defendants to intensive community-based mental health treatment in lieu of inpatient DSH competency restoration treatment. The law provides that the felony charges shall be dismissed at the conclusion of the period of diversion. IST Diversion Program funding would support programming for this felony population receiving

treatment in the community. Admission into diversion and CBR programs is made by order of the court, including cases where the District Attorney objects on public safety grounds. Individuals charged with murder, voluntary manslaughter, certain sex offenses and possession or use of a weapon of mass destruction are excluded. All other felonies are potentially eligible. The DSH programs require potential participants receive behavioral health assessments and forensic risk assessments to determine suitability and needs. IST CBR Program funding will allow eligible felony IST defendants to receive competency restoration services in a community setting in lieu of an inpatient DSH setting to restore their competency and resolve charges. They may also have their charges dismissed by the court if they complete diversion and transition from DSH-funded housing to community-based treatment and support long term.

To ensure the expansion of DSH-funded community-based care did not unintentionally result in an increased number of individuals deemed IST on felony charges, an IST determination growth cap for each county was established, along with a financial penalty payment for exceeding the baseline. A Mental Health Diversion (MHD) fund was established to deposit the IST Growth Cap Penalty funds collected from counties.

County baselines factor in total felony IST determinations in FY 2021-22, and subsequent FYs. If a county's total number of annual felony IST determinations exceeded the baseline, the county was subject to an IST growth cap penalty payment into the MHD fund. The County's baseline for IST commitments as of FY 2021-22 is as follows:

- In FY 2021-22, the County baseline for IST commitments was 207.
- In FY 2022-23 the County had 289 IST commitments, exceeding the growth cap baseline by 82 and resulting in a penalty payment of approximately $4.1 million.
- In FY 2023-24 the County had 286 IST commitments, exceeding the growth cap baseline by 79 and resulting in a penalty payment of approximately $3.9 million.

After being remitted to the MHD Fund, funding is disbursed back to counties in an amount equal to each county's *IST Growth Cap Penalty* to support counties in activities that help individuals with SMI and reduce felony IST determinations. Based on the IST Growth Cap Penalty payments remitted by the County to the MHD, the County is anticipated to receive approximately $4.1 million in FY 2024-25 and $3.9 million in FY 2025-26. The County will submit a plan to DSH for the use of the funds prior to receipt, for one or more of the following activities supporting people with SMI:

- **Pre-Booking Activities:** Inclusive of treatment, support services, or housing of people approved by a court to participate in the Care Act program.
- **Post-Booking Activities**: Inclusive of treatment, support services, and housing for people likely to be deemed IST.
- **Re-entry Services and Support**: Inclusive of housing, to serve people restored to competency following a felony IST commitment.

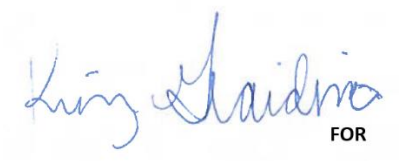
Planning is underway to determine the most effective investment of IST Diversion and CBR Program and IST Growth Cap Penalty funds, in alignment with DSH guidelines, and staff will return to the Board at a future date with recommended actions.

SUBJECT: AUTHORIZE ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION INFRASTRUCTURE PROJECT GRANT FUNDS (DISTRICTS: ALL)

Today's action, if approved, will allow the County to accept new one-time funding of up to $21,375,000 of *IST Infrastructure Grant* funds to invest in establishing dedicated infrastructure that supports eligible individuals with complex conditions who are deemed felony IST.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN
Today's proposed actions support the County of San Diego 2025-2030 Strategic Plan initiatives of Equity (Health), Community (Quality of Life), and Justice (Restorative) as well as the regional *Live Well San Diego* vision, by reducing disparities and disproportionality of individuals by implementing new services that are designed to improve outcomes for persons with serious mental illness who are involved with the criminal justice system.

Respectfully submitted,



EBONY N. SHELTON
Chief Administrative Officer

ATTACHMENT(S)
N/A