COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

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First District

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Second District

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Third District

MONICA MONTGOMERY STEPPE
Fourth District

JIM DESMOND
Fifth District

DATE: **May 19, 2026** DRAFT **XX**

TO: Board of Supervisors

SUBJECT

AUTHORIZE ACCEPTANCE AND APPROPRIATION OF GROWTH CAP PENALTY FUNDS, ACCEPTANCE OF INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED RESTORATION PROGRAM AND INFRASTRUCTURE PROJECT GRANT FUNDS, ADOPT A BOARD AUTHORIZING RESOLUTION AND AUTHORIZE REQUESTS FOR STATEMENT OF QUALIFICATIONS TO ESTABLISH CONTRACTS FOR IST SERVICES (DISTRICTS: ALL)

OVERVIEW

In recent years, California's legislature has implemented new laws, penalties, and funding in response to a significant increase in the number of individuals statewide committed to the Department of State Hospital after being found incompetent to stand trial (IST) as part of a criminal case. In 2023, the California Department of State Hospitals (DSH) made 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 diversion and community-based restoration programming as well as infrastructure. The funding is intended 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. If approved, today's item would accept funding from three state programs to enhance and build local treatment options for individuals with serious mental illness at risk of being found IST, or those found IST as part of a felony case.

The *IST Diversion and Community Based Restoration program* grant (IST Program Grant) will provide funding for individuals deemed IST with alternative treatment options outside of state hospitals. The various program components include community-based mental health treatment, intensive rehabilitation, and support services to help individuals restore their competence and reintegrate into the community. The program is designed to reduce the number of individuals awaiting admission to state hospitals and to provide them with the necessary supports to avoid criminal charges.

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 whom are enrolled in the IST Diversion and Community Based Restoration program, funded by the IST Program Grant.

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In January 2024, the County of San Diego (County) submitted letters of interest for the IST Program Grant to provide both diversion and community-based restoration programming. In early 2026, DSH notified the County of a total award of $41,622,000 for the IST Program Grant and $4,687,500 for the IST Infrastructure Grant, with the intent to serve a total of 50 individuals. Today's action requests the San Diego County Board of Supervisors authorize acceptance of $46,309,000 in one-time IST Program Grant and IST Infrastructure Grant funds from DSH. In addition, today's action includes a recommendation to direct the Department of General Services to solicit a Request for Specific Qualifications.

Additionally, in 2022, Senate Bill (SB) 184 created the Incompetent to Stand Trial (IST) *Growth Cap* on felony IST commitments to the California Department of State Hospitals (DSH) which granted each county a baseline of IST commitments. It also established a penalty mechanism for counties who exceed their county-specific baseline starting fiscal year (FY) 2022-23. The Bill also established the process through which counties can request their penalty back as long as the penalty funds are reinvested in approved local programs and services that reduce IST commitments, such as diversion, competency restoration, and community-based behavioral health treatment, consistent with state guidelines.

The County paid penalty funds for FY 2022-23 in the amount of $4,069,330 and FY 2023-24 in the amount of $2,669,914 due to exceeding the county's baseline in both FYs. In February 2026, the County submitted a Growth Cap Expenditure Plan for FY 2022-23 and FY 2023-24 to DSH to increase justice involved Assertive Community Treatment (ACT) programs and strengthen justice partners' capacity to identify, advocate and refer individuals at-risk of IST to the appropriate level of care. Today's action requests the San Diego County Board of Supervisors authorize acceptance and appropriation of a total of $6,739,244 in one-time Growth Cap Penalty funds from DSH.

These items support 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.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

1. Authorize the acceptance of returned Growth Cap penalty funds from the Department of State Hospitals (DSH), totaling up to $6,739,244 for Fiscal Year (FY) 2022-23 and FY 2023-24 for IST commitment reduction activities; and authorize the Chief Administration Officer, or designee, to execute all required documents necessary to receive funds from the Mental Health Diversion Fund, make technical budget adjustment, and enter into or amend agreements consistent with the DSH-approved Growth Cap Expenditure Plan.

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2. Authorize the acceptance of Incompetent to Stand Trial (IST) Diversion and Community-Based Restoration Program and Infrastructure Project Grant Funding of up to $46,309,000, from the Department of State Hospitals (DSH) for programming and infrastructure efforts to serve the IST population; and authorize the Behavioral Health Services Director, 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
3. Adopt a Resolution entitled: A Resolution of the Board of Supervisors of County of San Diego Authorizing County Proposal to Participate in the Incompetent to Stand Trial Diversion and Community-Based Restoration Infrastructure Program to authorize the BHS Director, to execute the IST Infrastructure Grant, and all grant related documents.
4. In accordance with Section 401, Article XXIII of the County Administrative Code, authorize the Director, Department of Purchasing and Contracting, to issue a Request for Statement of Qualifications (RFSQ) for local diversion and community-based restoration programming, and if needed, amend current contracts to reflect changes in program, funding or service requirements.

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 Program and 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 this request related to the Growth Cap penalty will be included in the Fiscal Year 2026-28 CAO Recommended Operational Plan. If approved, this request will result in one-time costs and revenue of $6,739,244 for the IST commitment reduction activities outlined in the Growth Cap Expenditure Plan and is included in Fiscal Year (FY) 2026-27 ($4,264,394) and FY 2027-28 ($2,474,850).

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Funds for the Incompetent to Stand Trial-Diversion and Community-Based Restoration Program Grant (IST Program Grant) are not included in the FY 2025-26 through FY 2030-31 Operational Plan. Funds for the IST Diversion and Community-Based Restoration Infrastructure Project grant (IST Infrastructure Grant) are included in the FY 2025-26 and FY 2027-28 Operational Plan. If approved, this request is anticipated to result in one-time estimated costs and revenue of $41,622,000 for the IST Program Grant in FY 2025-26 through FY 2030-31 and $4,687,500 in IST Infrastructure Grant for FY 2025-26 through FY 2027-28. 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 for the current fiscal year.

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.

On April 2, 2026, the Behavioral Health Advisory Board voted to _____ the recommendations.

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

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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 was 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 allocated funds 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.

IST Diversion and Community Based Restoration program grant (IST Program Grant)
DSH put forward additional funding opportunities to support community-based restoration (CBR) and Diversion programming, which are provided to counties upon execution of contracts with DSH. In January 2026, DSH notified the County of their award allocation for both IST Diversion and Community-Based Restoration (CBR) Program grant funding is $41,622,000, to serve up to 50 individuals determined to be felony IST. Funding for both CBR and Diversion can be used for program implementation, wraparound services, administrative overhead, justice partner funding, violence risk assessment, and diversion court liaison functions. All funds must be expended by June 30, 2031.

IST Diversion and Community-Based Restoration Infrastructure Project Grant
The IST Diversion and Community-Based Restoration Infrastructure grant (IST Infrastructure Grant) 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. On August 29, 2024, DSH notified the County of a preliminary award, with the final award allocation being $4,687,500. All funds must be expended by June 30, 2028.

IST Growth Cap Penalty

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Following the Workgroup's recommendation, California legislators implemented an additional enforcement mechanism through Senate Bill (SB) 184 to increase the likelihood that expanded funding would fund activities that produce the desired effect of fewer IST commitments to State Hospitals.

SB 184 established the IST growth cap and penalty structure to incentivize counties to reduce reliance on state hospital commitments for individuals committed pursuant to Penal Code § 1370 on felony charges, setting each county's baseline as its Fiscal Year (FY) 2021–22 total felony IST determinations. Beginning in FY 2022-23, for each annual felony IST determination that exceeds the county's baseline, the County must pay penalty amounts calculated against DSH's per-individual state hospital treatment rate. DSH reconciles counts by September 30 of each year. Invoices are issued in late May, and payment is due within 90 days. In FY 2022-23 and 2023-24 the County exceeded the allotted baseline by 82 and 75 commitments, respectively.

Per DSH policy, counties submit the assessed penalties to the State's Mental Health Diversion Fund and can receive 100% of those funds back upon DSH approval of the County's Growth Cap Expenditure Plan. On March 27, 2026, the County's plan for FY 2022-23 and 2023-24 was approved by DSH. Eligible activities for expenditures include community crisis intervention services, pre-release services with the goal of preventing IST determination, and reentry services for individuals restored to competency and released to the community.

In October 2025, the County submitted a Growth Cap Expenditure Plan for FY 2022-23 penalties to DSH, which a broad stakeholder group had consulted and agreed upon, for review and approval. In February 2026, DSH asked the County to submit a combined Growth Cap Expenditure Plan for FYs 2022-23 and 2023-24. The County submitted this plan on February 27, 2026. This plan proposes to deploy the penalty funds across two project areas: first, Behavioral Health Services (BHS) seeks to expand justice involved Assertive Community Treatment for an additional 49 at-risk individuals with intensive treatment and housing stabilization. Secondly, funds will be dedicated to cross-agency staffing and coordination to identify, assess, and connect individuals at risk to be determined IST to treatment in the community and support reentry for individuals who return to San Diego County from DSH. Together, these investments are designed to reduce felony IST determinations through earlier identification of at-risk individuals, stabilization, improved case handling, and continuity of care.

Today's item requests the San Diego County Board of Supervisors (Board) to authorize acceptance of one-time IST Diversion and Community Based Restoration program (IST Program Grant), IST Diversion and Community-Based Restoration Infrastructure Project (IST Infrastructure Grant) grant funding and IST Growth Cap Penalty funds, and adopt a Board Authorizing Resolution and issue a Request for Statement of Qualifications (RFSQ) for local diversion and community-based restoration programming, and if needed, amend current contracts to reflect changes in program, funding or service requirements.

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LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed actions support the County of San Diego 2026-2031 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,

USE "INSERT PICTURE" FUNCTION TO INSERT SIGNATURE

EBONY N. SHELTON
Chief Administrative Officer

ATTACHMENT(S)

A Resolution of the Board of Supervisors of County of San Diego Authorizing County Proposal to Participate in the Incompetent to Stand Trial Diversion and Community-Based Restoration Infrastructure Program

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