STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY PETE WILSON, GOVERNO

DEPARTMENT OF MENTAL HEALTH
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October 20, 1997

DMH INFORMATION NOTICE NO.: 97- 16

TO: LOCAL MENTAL HEALTH PROGRAM DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: CHANGES TO PENAL CODE SECTION 1372(a)(2)

The following material is being provided to you for information only. Those county agencies which may be required to take action pursuant to the new requirements, i.e., superior courts and sheriff departments, have been notified of their responsibilities through separate correspondence.

This is to bring to your attention the enactment of Senate Bill 391, Solis, (Chapter 294, Statutes of 1997) which amends the provision of the law relating to defendants who are, or may be, mentally Incompetent to Stand Trial (IST). Chapter 294 was enacted under the "Urgency Statute" provisions of state law, thereby taking effect on August 18, 1997. The new law amended Section 1372 of the Penal Code (PC) and clarifies the sheriff's responsibility relative to the transportation of patients from the state hospital, or other treatment facility, to the court. It also places a new responsibility on the courts relative to the preparation of orders of commitment.

PC Section 1372(a)(2) requires the return of an IST defendant to court within ten days of the filing of the certificate of restoration of competency. As stated in DMH Letter No.: 93-20 (October 29, 1993), state funding is available for up to ten state hospital days following the court's receipt of the certificate of restoration of competency. Billings for days in excess of the ten day limit will be sent to the superior court for payment by the committing county.

PC Section 1372(a)(2), as amended by Chapter 294 (excerpted page enclosed), now requires that court orders committing individuals to state hospitals, or other treatment facilities, pursuant to PC Section 1370 include direction that the sheriff redeliver the patient to the court without any further order from the court upon receiving from the state hospital, or other treatment facility, a copy of the certificate of restoration of competency. The section also states that any patient who is on outpatient status shall also be returned by the sheriff to the court through arrangements made with the outpatient supervisor.

If the Department of Mental Health can be of any assistance regarding these amendments, please contact Robert B. Florida, Chief, Forensic Services, at (916) 654-1471.

Carole A. Hood for
STEPHEN W. MAYBERG, Ph.D.
Director

Enclosure

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(i) Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this part.

SEC. 30. Section 12699.50 of the Insurance Code is repealed.

SEC. 31. Section 1372 of the Penal Code is amended to read:

1372. (a) (1) If the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a state hospital or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration. The defendant shall be returned to the committing court in the following manner: A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings. The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor. In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of Mental Health shall report to the fiscal and policy committees of the Legislature on an annual basis in January, on the number of days that exceed the 10-day limit.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or