

Modifications to the originally proposed text are clearly illustrated by the following methods:

- (1) The language originally proposed to be added is single underlined.
- (2) The language proposed to be added to the originally proposed text is double underlined.
- (3) ~~The language proposed to be deleted from the originally proposed text has double strikeout and single underlining.~~

California Code of Regulations

Title 17, Division 2,

Chapter 1. General Provisions

Subchapter 11. Developmental Center Safe to Serve Evaluation Process

Article 1. General

§ 51100. Intent and Purpose.

The purpose of this subchapter is to describe the process the Department of Developmental Services will utilize to determine whether a person is not safe to serve or provide care for at a developmental center, and if so, invoke the Department's power to decline admission to the person under Welfare and Institutions Code section 6510.5.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 6510.5, Welfare and Institutions Code.

§ 51101. Constituting a Safe-to-Serve Committee.

(a) Individuals referred for admission to a developmental center must be assessed for service and support needs under Welfare and Institutions Code section 4418.7. When the 4418.7 assessment process indicates that the individual's admission to a developmental center would threaten pose a significant threat to that person or persons already admitted to the developmental center or to the center's staff, that cannot be mitigated by the staffing, security, or treatment available in the developmental center and the developmental center is considering exercising its right under Welfare and Institutions Code section 6510.5 to deny admission to the person referred, the director of the developmental center shall form a Safe-to-Serve Committee to make an admission determination.

(1) For individuals who have been actively receiving regional center services for at least the previous 3 years from the issuance of a commitment order, the Committee shall be formed within 7 days from the receipt date of a court order made pursuant to Penal Code section 1370.1 to allow the Welfare and Institutions Code section 4418.7 assessment to place a person at the Porterville Developmental Center, or an order made pursuant to Welfare and Institutions Code section 6506 or 6509 to place a person at a developmental center under the jurisdiction of the Department, to start collecting records and to proceed with the Welfare and Institutions Code section 4418.7 assessment.

(2) For individuals who have not been actively receiving regional center services for the previous 3 years from the issuance of the commitment order, the Committee shall be formed and start collecting records within 15 days from the receipt date of a court order made pursuant to Penal Code section 1370.1 to allow the Welfare and Institutions Code section 4418.7 assessment to place a person at the Porterville Developmental Center or an order made pursuant to Welfare and Institutions Code section 6506 or 6509 to place a person at a

developmental center under the jurisdiction of the Department, and may be extended by the court for an additional 15 days for good cause shown.

(b) The regional center shall have the time periods specified in subdivision (a) to gather the information specified in section 51102, subdivision (a)(1) to (10).

(c) The Safe-to-Serve Committee constituted pursuant to subdivision (a) shall be an interdisciplinary group of professionals comprised of at least one physician, the program director, a psychologist from the developmental center, a staff member from the Office of Protective Services, a representative from the regional resource development project, a regional center representative, and any other persons the director of the developmental center determines are needed to assess the developmental center's ability to safely serve the individual committed by a court to the developmental center.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

§ 51102. Documents to be Reviewed by the Committee.

(a) Within 15 days from the date of receipt of the following information from the regional center, the Safe-to-Serve Committee shall meet to assess a person committed to a developmental center pursuant to Welfare and Institutions Code sections 6506 or 6509 or Penal Code section 1370.1. The assessment shall be based upon the admission package of information generated by the regional center regarding the person. Along with the assessment of the person's needs for services and supports conducted pursuant to Welfare and Institutions Code section 4418.7, the information provided by the regional center shall include the following, to the extent that the regional center has it within its possession:

(1) ~~a current~~ the most recent psychological assessment/ and functional assessment of behavior;

(2) the person's history, including his or her placement history and living arrangements;

(3) assessments or any other report used by the court to make its findings of incompetent to stand trial, or danger to self or others;

(4) police reports and information regarding prior law enforcement arrests or contacts;

(5) prior convictions and prison or jail time served;

(6) IQ testing;

(7) most recent individual program plans, including any treatment or diagnosis for mental health issues;

(8) prior commitments and treatment at psychiatric facilities, including facilities under the jurisdiction of the Department of State Hospitals;

(9) malingering evaluations; and,

(10) any additional documents requested by the developmental center.

(b) If it determines the documents provided by the regional center are insufficient for a safe-to-serve determination, the Committee shall within 7 days request that additional documentation or information be provided within 14 days of the request from the regional center, county jail, court, district attorney, or defense attorney. Subject to any claim of privilege, the Committee may request a court order directing a particular entity to disclose records to the developmental center.

(c) A request made to the court pursuant to subdivision (b) shall include a letter to the court indicating:

(1) what documents the Committee has received;

- (2) what documents have not been provided;
- (3) what documents it further requests;
- (4) why the documents the Committee possesses are insufficient for a safe-to-serve determination, and
- (5) an estimated timeframe for a decision by the Committee to the court once the requested documents are received.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

§ 51103. Safe-to-Serve Determination.

(a) The Safe-to-Serve Committee shall determine whether a committed individual should be admitted to the developmental center, or denied admission pursuant to Welfare and Institutions Code section 6510.5. The Committee's decision shall be made within 15 days of receiving all the material requested by the developmental center under section 51102. This time period for a decision by the Committee may be extended once by 7 days at the discretion of the Committee, and another 7 days by the court for good cause shown.

(b) The safe-to-serve decision shall be made on the particular facts of the case after examining the totality of the circumstances. The Committee shall balance the need to care for and treat the committed individual with the need to protect the health and safety of the person, the currently admitted developmental center residents, and the facility's staff.

(c) Prior to declining admission, the Committee shall consider the following:

(1) whether the current assessments and information are adequate to assess the individual or new or additional assessments should be requested;

(2) the medical, behavioral, and physical issues and the supports the individual needs;

(3) the individual's ability to have full access to rights afforded other residents, or the likelihood of rights being restored to the person within a reasonable amount of time;

(4) the individual's developmental disability diagnosis, if any;

(5) malingering evaluations, if any;

(6) prior history of living in a structured group setting;

(7) history of non-compliance with treatment and individual program plan services in prior settings;

(8) the individual's prior convictions, time served in jail or prison, his or her propensity for violence, and history of substance abuse;

(9) the individual's prior history of being served in a psychiatric facility, including a facility under the jurisdiction of the Department of State Hospitals; and

(10) whether the individual is currently being served by a regional center.

(d) If the Committee determines that it will admit the individual, the developmental center shall notify the court, district attorney, defense attorney, and regional center within 7 days of its decision. The developmental center shall admit the person in accordance with its existing policies and procedures relating to admissions.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

§ 51104. Report to the Court and Interested Parties.

(a) If the Committee determines that the individual be denied admission, the decision shall be confirmed by the developmental center's executive director. If the executive director agrees that the individual cannot be safely served, the executive director or designee shall prepare a detailed report explaining the basis for making the not-safe-to-serve determination, identify the additional services or supports the person requires that are unavailable in the developmental center, why these services or supports cannot be provided within the developmental center, and may shall include recommended placement alternatives from the regional center, if known. The executive director or designee shall file its report with the court in which the Penal Code section 1370.1 or Welfare and Institutions Code section 6500 et seq. proceeding is pending, and shall simultaneously serve the report on the district attorney, the individual's defense attorney, regional center clients' rights advocate, and applicable regional center. The executive director or designee shall file and serve the report with the court within 15 days of the Committee's determination that the person be denied admission.

(b) If the developmental center's executive director disagrees with the Committee's determination that the individual cannot be safely served, then the executive director shall authorize the admission of the person. The executive director or designee shall notify the court, district attorney, defense attorney, regional center clients' rights advocate, and regional center within 7 days of the executive director's decision to admit the person. The developmental center shall admit the person in accordance with its existing policies and procedures relating to admissions.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

§ 51105. Opportunity for Response by Interested Parties.

If within 10 days of the filing and service of the developmental center's report denying admission, the district attorney, defense attorney, or regional center files with the court and serves a response to the developmental center's report, and includes a request that the developmental center reconsider its not-safe-to-serve determination based upon the information and evidence submitted in the response, the developmental center shall consider the arguments and evidence submitted in any such responses. Within 15 days of the last served response, the executive director or designee shall file with the court and serve a supplemental report responding to any comments, arguments or evidence from the interested parties' responses. The supplemental report shall expressly state whether the developmental center reaffirms or reverses its not-safe-to-serve determination. If the developmental center reverses its not-safe-to-serve determination, the individual's review by the Safe-To-Serve Committee shall not change his or her order of admission to the developmental center if admission had been granted without convening the Committee.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

§ 51106. Alternative Placement Recommendations by the Regional Center and Department.

If the developmental center's initial decision to deny admission is not challenged or its supplemental report affirms its not-safe-to-serve determination and the center declines to admit the person pursuant to Welfare and Institutions Code section 6510.5, the applicable regional center shall work with the Department to identify alternative placement options. Within 15 days of the latter of the deadline to challenge the developmental center's initial decision to deny admission or the filing of the supplemental report, the regional center and Department shall jointly report to the court, in writing, any placement options and other necessary services and supports that meet the individual's needs in the community as identified by the Safe-to-Serve Committee, for purposes of appropriate actions by the court.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Section 1370.1, Penal Code; and Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.