



Contra  
Costa  
County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: April 9, 2019

Subject: PANEL TO SELECT PROSPECTIVE CAPACITY HEARING OFFICERS FOR CONSIDERATION BY  
THE SUPERIOR COURT

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**RECOMMENDATION(S):**

APPOINT the County Counsel, or designee, to serve on a panel to identify and recommend prospective commissioners, referees, or hearing officers to the Superior Court for the purpose of resolving certain matters involving inmates who appear unable to consent to or refuse psychiatric medication.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

With the increased number of individuals with serious mental disorders in detention facilities, the ability to administer psychiatric medication within the facilities has become increasingly important. In 2017, the Legislature amended Penal Code section 2603 to authorize the involuntary administration of psychiatric medication to inmates under certain limited circumstances.

Under Section 2603, psychiatric medication can be administered without consent either in an emergency or on a non-emergency basis, after the treating psychiatrists make certain

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **04/09/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: April 9, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Julie DiMaggio Enea  
(925) 335-1077

By: Stacey M. Boyd, Deputy

cc:



findings. The findings must include: the existence of a serious mental disorder; that the inmate is gravely disabled; and either that the inmate lacks the capacity to consent to or refuse medications or that the inmate is a danger to self or others if not



## BACKGROUND: (CONT'D)

medicated. The inmate must be provided a hearing for the purpose of determining his or her capacity or dangerousness due to a mental disorder (“capacity hearing”).

Capacity hearing requirements differ depending upon an inmate’s status as pre-trial or post-trial. A court-appointed commissioner or referee, or a court-appointed hearing officer may conduct capacity hearings in place of a Superior Court judge when an inmate is post-trial. A Superior Court judge is required to conduct capacity hearings when the inmate is pre-trial. However, a court-appointed commissioner or referee, or a court-appointed hearing officer may decide whether an inmate should be medicated up until the time of their capacity hearing regardless of whether they have stood trial.

As designated in Welfare and Institutions Code section 5334, all commissioners, referees, and hearing officers are appointed by the Superior Court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney, as designated by the county board of supervisors. The County needs to assemble a panel in order to develop a list of attorneys qualified to serve as hearing officers. The resultant list will be provided to the Superior Court, which can appoint individuals from the list to rule in the above circumstances.

Both the Health Services Department and the Office of the Sheriff remain committed to transferring individuals to appropriate treatment facilities. However, as the legislature has recently recognized, there is a lack of community-based beds suitable and available to detainees with serious mental disorders. This action is recommended in order to provide mental health treatment to detained individuals.

Board approval of the recommended action will assist in the development of additional judicial resources to allow for qualified, court-appointed commissioners, referees, and hearing officers to conduct certain capacity hearings and decide *ex parte* applications.

## CONSEQUENCE OF NEGATIVE ACTION:

Should the Board elect to not approve the recommendation, the County will not convene a panel to identify and recommend qualified, prospective commissioners, referees, and hearing officers to the Superior Court, thereby requiring all hearings under Section 2603 to be conducted by Superior Court judges.