



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: October 22, 2019

Subject: CONTRACTS FOR MENTAL HEALTH HEARING OFFICERS

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Administrator, or designee, to execute contracts including modified indemnification with Martha Anthony and Richard Frankel, each in an amount not to exceed \$50,000, to provide mental health hearing officer services, upon appointment by the Superior Court, for detainees at County detention facilities, for the period October 1, 2019 through December 31, 2021.

**FISCAL IMPACT:**

The hearing officers will be compensated at a rate of \$125 per hearing plus reasonable expenses. Hearing Officer costs incurred by the County will be reimbursed by the Superior Court.

**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.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **10/22/2019** ☒ 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

ABSENT: 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: October 22, 2019

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

By: Laura Cassell, Deputy

Contact: Julie DiMaggio Enea  
(925) 335-1077

cc:

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 findings. The findings must include: the existence of a serious mental disorder; that the inmate is gravely disabled; and either that the inmate

## BACKGROUND: (CONT'D)

lacks the capacity to consent to or refuse medications or that the inmate is a danger to self or others if not 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 is required to assemble a panel in order to develop a list of attorneys qualified to serve as hearing officers for appointment by the Superior Court, which can appoint individuals from the list to rule in the above circumstances. The County Administrator's Office recruited for hearing officer candidates in July and August 2019 and convened the specified panel on August 28, 2019, which unanimously recommended Ms. Anthony and Mr. Frankel to the Superior Court. The Superior Court approved the panel's recommendations on August 29th.

Board approval of the recommended action will assist in the development of additional judicial resources to allow for qualified, court-appointed hearing officers to conduct certain capacity hearings and decide *ex parte* applications. The contracts provide County indemnification of the Hearing Officers for claims under the Tort Claims Act (Gov. Code, § 810; specifically § 820 et seq. and § 825 et seq.).

Hearing Officers are appointed by the Superior Court and responsible for conducting mental health facility-based hearings to determine:

- (1) probable cause for further involuntary detention of mentally disordered patients in psychiatric facilities (Probable Cause/Certification Review Hearings, Welfare & Institutions Code Section 5250 et seq), and/or
- (2) capacity and cause for involuntary administration of psychiatric medication pursuant to Penal Code Section 2603.

(3) an individual's capacity to refuse psychotropic medication (Capacity Hearings, Welfare & Institutions Code Section 5332 et seq).

A Mental Health Hearing Officer may also be also responsible for conducting "Roger S" hearings, an administrative procedure for admission of minors who are not dependents or wards of the juvenile court to acute care public psychiatric facilities under contract with the County of Contra Costa.

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.

CONSEQUENCE OF NEGATIVE ACTION:

Should the Board elect to not approve the recommendation, the County will not engage the recommend qualified, prospective hearing officers, thereby requiring all hearings under Section 2603 to be conducted by Superior Court judges.