



California's Protection & Advocacy System
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Self Advocacy for Conditional Release Program (CONREP)

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CONREP

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CONREP

What is CONREP?

CONREP stands for Forensic Conditional Release Program. It is an outpatient treatment and supervision program for people who have been charged with a felony and committed to a state hospital as Incompetent to Stand Trial (IST), Not Guilty by Reason of Insanity (NGI), a Sexually Violent Predator (SVP), or a Mentally Disordered Offender (MDO). People who are placed on CONREP after commitment to a state hospital remain under the jurisdiction of the State Department of Mental Health (DMH).

People who are at a state hospital under the above commitments can apply for CONREP. It is important to know that the courts have said that CONREP is not an entitlement, meaning something you have a right to, but is discretionary; meaning something you may be offered. It is a form of treatment that may be ordered if medical experts and the court agree that an individual could benefit from outpatient treatment **AND** the person would not pose a danger to himself or herself and/or the community.

How is CONREP administered?

The State of California gives each county money to fund a CONREP program. A County's CONREP program can be administered by the county, or by a private or non-profit agency. The DMH appoints a community program director to run the program in a particular county or region.

Who is eligible for CONREP?

If you have been committed to a state hospital under Penal Code 1370 (Incompetent to Stand Trial), 1026 (Not guilty by Reason of Insanity), or 2972 (Mentally Disordered Offender), you are eligible

to apply for the CONREP program. Again, CONREP is not a right, it is discretionary.

How soon I can apply for CONREP?

When a person can be released on CONREP depends on the original criminal charges and the nature of the person's commitment.

If you are at the hospital under a P.C. 1370 or P.C. 1026 commitment and you have been charged with any felony that involves death, great bodily injury or any act that is a serious threat of bodily harm to another person, the earliest that you can be eligible for CONREP is 180 days after commitment.

If you are found incompetent to stand trial or not guilty by reason of insanity on charges of a misdemeanor or a felony that does not involve death, great bodily injury or any act that was a serious threat of bodily harm to another person, you may be eligible for outpatient commitment to CONREP from the beginning of your commitment.

If you are at the hospital under a P.C. 2972 commitment, you may request an outpatient treatment hearing in front of the Board of Prison Terms after being at the hospital for 60 days.

What are the legal standards for commitment under CONREP?

Generally, an individual may be placed on CONREP only when both the facility director and the CONREP community program director (CONREP director) recommend to the court that the individual can be treated safely and effectively in the community. See e.g., Penal Code §§ 1602-1603, 2964(a), 2972. Then, the

court either approves or denies the transfer to CONREP.
Remember that going into CONREP is not a guaranteed right.

The main thing that the court looks at is whether you would be a danger to the community if you were transferred into a CONREP program. In the past, here are some factors that the courts have considered:

- A person who was found NGI of multiple burglaries asked to go into CONREP. The court denied the request because the person could not show that he was not a danger to other people's property.
- Another person was denied CONREP because he still heard voices telling him to hurt other people.
- A person was denied CONREP because he said that he would not take his prescribed psychiatric medication.
- A person was accepted into CONREP when he was able to explain his psychiatric condition and realized that even if his delusions returned, he did not need to act upon them.

What is the procedure for evaluating an individual's eligibility for placement into CONREP?

First, the hospital sends a referral packet recommending CONREP to the court. Then the court must immediately forward this information and your criminal history to your county's CONREP program. For example, if you were found NGI in Alameda County, the Alameda County Superior Court would send the information and your criminal history to the Alameda County CONREP program. After the CONREP program receives the information, it has 30 days to do an evaluation and send a report to the court.

Note that different procedures may apply to initial MDO commitments under CONREP, and CONREP commitments of people determined to be SVPs.

What things does the CONREP director look at in determining whether to approve or deny an application for CONREP placement?

The CONREP director is given broad guidelines to accept or reject someone. Even if the hospital director says that you are ready for CONREP, CONREP can still reject you.

A CONREP liaison is required to visit you as part of the CONREP program's evaluation. In some cases, this may be done through video conference. The purpose of the visit(s) is to review your treatment program, identify things that prevent you from going into CONREP, and to give feedback to hospital staff. CONREP will also review your chart and talk to your treatment team. CONREP wants to find out about your conduct and treatment history. CONREP will also talk with you. Here are some things CONREP looks at in its evaluation of whether you should be transferred to CONREP:

Your recent behavior: Have you been subject to:

- a. Special incident reports?
- b. Physical altercations/assaults?
- c. Seclusion and/or restraints?

What is your level of dangerousness?

Have you been going to your groups?

Are you accepting treatment?

Psychiatric medications:

- a. Do you take your medications?
- b. How well are the medication(s) helping?
- c. Are you having side effects from the medication(s)?

Your mental illness:

- a. Do you know your symptoms?
- b. Do you understand the risk factors for relapse?
- c. Did you, or do you, have substance abuse issues?

Treatment progress:

- a. Conditional Outpatient Treatment (COT) readiness assessment
- b. Treatment goals
- c. Relapse prevention strategies
- d. Privilege level

Do you have a social network in the hospital?

Do you participate in unit activities?

Are there any relevant family issues?

Have you been in CONREP before?

Are you motivated and willing to participate in CONREP, and would you benefit from CONREP?

The crime that put you in the hospital:

- a. Your insight
- b. Your feelings about what you did
- c. Your feelings about the victim(s)

d. Whether you had warning signs before you committed the offense

What are your long and short term goals?

How are your hygiene and grooming?

How well have you cooperated during the CONREP interview?

Do you agree with CONREP's terms and conditions?

Do you have a wellness and recovery plan for community living?

Should you be restricted from living near the victim or the victim's family?

Other people that CONREP will talk to may include your unit staff and clinical staff. Clinical staff may include your psychiatrist, psychologist and social worker. CONREP may also speak with your family and friends, and the victim(s) and/or their family.

What are some questions that CONREP may ask you, your treatment team, clinical staff, your family, friends, the victim and/or the victim's family?

Have you shown or expressed remorse or empathy for the victim(s)?

Do you accept responsibility for what you did?

Do you recognize that you have a mental illness?

Are you aware you need future help?

What will you do if you relapse? (This should be in your Wellness and Recovery Plan.)

Did your mental illness play a role in your offense?

Do you understand the need for CONREP?

Will you comply with the CONREP program?

If you have been revoked by CONREP, do you understand why?

How satisfied are you with your psychiatric medication(s)?

How do you feel about taking psychiatric medication(s)?

What happens if you are approved by CONREP?

First, CONREP sends a letter to your treatment team. Also, the CONREP program director and the hospital director submit to the court a recommendation for placement into CONREP. They include information about your criminal offense and your criminal history. Additionally, the CONREP director submits a description of specific terms and conditions that you must follow while in CONREP. Then the court must schedule a hearing within 15 judicial days (this usually means working days, Monday through Friday, that are not holidays) from when the court gets the information.

If your offense was a violent felony, the prosecutor must tell the victim(s) or victim's next of kin where and when the hearing will be held.

What are the legal standards and procedures for the CONREP placement hearing?

A court can only give you a placement hearing if CONREP and the hospital director both state to the court that you being in CONREP will not endanger the health and safety of others if you

are placed in CONREP, and that you will benefit from the CONREP program.

At this hearing, you do not have the right to a jury trial. If you want a jury trial, the prosecutor must agree.

You have the burden of proof at this hearing. You must prove that you will not be a danger to the health and safety of others while in CONREP. You have to show this by the legal standard of a **preponderance of evidence**. This standard is different than when you were on trial for an offense. At your trial, the prosecutor had to prove that you did commit the crime, and the legal standard was **beyond a reasonable doubt**. **Roughly stated, “Preponderance of evidence means a 51% chance that the evidence presented is to be believed.”**

In deciding to accept or reject you into the CONREP program, the court must consider the circumstances and nature of your crime, as well as your criminal history. Just because CONREP and the hospital director recommend you for CONREP, approval by the court is not automatic.

If the court denies me CONREP, can I appeal that decision?

Yes. The trial court’s decision is reviewed under the abuse of discretion standard. A court commits an error only if it “exceeds the bounds of reason, all of the circumstances being considered.” If you want to read about this, here are some court cases that deal with this issue:

People v Henderson (1986) 187 Cal. App. 3rd 1263, 1266-1268

People v Cross (2005) 127 Cal. App. 4th 63, 73

If you are at Napa State Hospital, these court cases are available on the Self Help Office's computer.

What happens if the court releases me into CONREP?

Once the court orders you released into CONREP, you are placed on outpatient status subject to the terms and conditions specified in your supervision and treatment plan. If you are at the hospital under an NGI commitment, your CONREP director has 21 days to place you after CONREP receives the court's approval.

Some people may be placed in a transitional residential program before going into a community placement.

Technically, placement in CONREP is supposed to last one year but this can be extended indefinitely.

What kind of terms and conditions can be imposed on you by CONREP?

Because CONREP's main goal is to protect the public, the program can impose restrictive conditions. Treatment must be determined individually for each person, and usually includes:

- Individual therapy

- Group therapy

- Weekly drug screening

- Home visits both scheduled and unscheduled

- Mandatory medication

- Restrictions on:

- a. Where you can live

- b. Roommates
 - c. Travel
 - d. Weapons
 - e. Driving
 - f. With whom you can associate
 - g. Curfews
- Searches

Drug/alcohol testing

Before you start the CONREP program, CONREP will give you a written contract stating the conditions you will be subject to while in the program. If you refuse to sign, you will not be admitted into the program. While in CONREP, staff can change your terms and conditions, but they must give you the changes in writing and have you sign it.

Can I challenge my conditions?

There is nothing in the law that says you can challenge the conditions. You may be able to challenge them using principals of past parole cases. Some parolees have successfully challenged conditions of their parole by saying that the conditions were overboard. Here are two court cases that talk about this:

People v Garcia (1993) 19 Cal. App. 4th 97

People v Bauer (1989) 211 Cal. App. 3rd 937

However, many courts find that parolees and forensically committed persons should be treated differently on this issue.

What is the process for review of outpatient status?

Every 90 days, the community program director must submit a report on your progress to the court, the prosecutor and your defense attorney. After you have been in CONREP for a year, the court must hold a review hearing. The hearing must be held no more than 30 days after you have been in CONREP for one year. If the hearing happens later than the 30 days, it does not mean that you will automatically be released from CONREP.

In the report that CONREP sends to the court near the end of your one year, they will recommend one of three things:

To continue you in the CONREP program

To have you sent back to the hospital

To release you from CONREP

At the end of the hearing, the court must decide on one the above.

People in the CONREP program who were committed under P.C. 1026 (NGI) may petition the court for restoration of sanity after being in CONREP for one year. You may do this through a restoration of sanity petition under P.C. 1026.2, or a writ of habeas corpus.

Does time in CONREP count toward my maximum term of commitment?

If you were committed to a state hospital under a NGI, SVP, or MDO commitment, the answer is no. If you were committed under IST, then your time in CONREP will count toward your sentence if you go to court and are found guilty of the charge(s).

Here is an example: Joe was found NGI of felony and sent to Napa State Hospital. His maximum term, or 'top date,' is 10 years. After five years, he is accepted into CONREP. He was in CONREP for four years when he tested positive for cocaine. CONREP revoked him and sent him back to the hospital. He only served five years at Napa, so he still has five years until his 'top date,' even though he was in CONREP for four years.

Under what circumstance may I transfer to a different CONREP program?

If you are accepted into CONREP, the court usually orders you to be placed in the county where you were arrested. You may be transferred to another county's CONREP program "when clinically indicated." Some reasons may be:

Your family or support systems are in another county

You need to be in a different county than where your victim is located

Your safety and welfare would be jeopardized in your county

You need to be in a different county than individuals with whom you have previously engaged in criminal activity

The new county's CONREP program must accept you in order for a transfer to take place. Additionally, if you are under a MDO commitment, your parole agent and the new parole agent must also be involved.

How do I file a grievance against CONREP?

While in CONREP you have the right to file a grievance. You can file a grievance about any action taken by your program;

employee or sub-contractor that you feel affects your welfare or status. CONREP must tell you that you have a right to file a grievance, and how to file one. CONREP must also post information about the grievance process in a language that you understand, and must make the grievance form available to you

You have the right to discuss your grievance with the community program director or his or her designee. If you are not satisfied with their response, you can submit a formal grievance by using the CONREP Patient Grievance form. There are four levels of review:

Level I Review

Your Patient Grievance form is submitted to the CONREP Director or designee. They must respond to you on the written form within 15 working days from when they received your grievance. A complaint to a different agency, such as a county mental health grievance, may take the place of the Level I review.

Level II Review

The next step is to submit your grievance to the CONREP Operations Manager. The CONREP Community Program Director must tell you, in writing, how to reach the Operations Manager. The Operations Manager reviews your grievance and the Level I decision, and must respond to you, in writing, within 15 working days of getting your grievance.

Level III Review

If your grievance is denied at Level II, you may appeal to the Chief of Forensic Services. You must be given, in writing, the contact information for the Chief of Forensic Services. The Chief

reviews your grievance and the Level I and Level II decisions, and must respond to you in writing within 15 days of getting your grievance.

Level IV Review

If your grievance is denied, you may appeal the decision to the Director of the State Department of Mental Health or his or her designee. No timeline has been given for their response.

How do I get off CONREP?

There are three ways in which your commitment in the CONREP program can end:

When the court does not renew your commit in the CONREP program

When the CONREP director tells the court that you no longer meet the criteria for CONREP

When your outpatient status is revoked and you are sent back to the state hospital

When can CONREP send me back to the state hospital?

If you are sent back to the state hospital, this is called being revoked from CONREP. Here are some of the reasons a person's outpatient status can be revoked:

CONREP thinks you need extended inpatient treatment

You refuse to accept any more outpatient treatment

The prosecutor can petition to have your outpatient status revoked on the belief that you are a danger to the health and safety of the community or yourself

You commit a crime

You use an illegal substance

Your psychiatric condition decompensate

You leave your county without permission

You don't comply with your treatment contract

What is the procedure for a revocation hearing?

If you are under a SVP, IST, or NGI commitment, a hearing must be held within 15 court days of a revocation request. At the hearing, CONREP must prove the need for revocation by a preponderance of the evidence. You have the right to:

A written notice of the charges

The opportunity to confront and cross examine witnesses

A fact-finding hearing by a neutral body

If you lose the hearing, you have the right to appeal the decision. The standard on appeal is a clear record showing abuse of discretion.

If you are in CONREP under a MDO commitment, the procedure is a little different. You have the right to a revocation hearing conducted by the Department of Mental Health within 15 days of being taken back to the hospital or within 21 days if good cause exists.

Keep in mind that an individual who is determined to be dangerous or gravely disabled be hospitalized under a LPS commitment, even if his or her CONREP outpatient status has not been revoked.

What happens if I am revoked?

You are returned to a state hospital or any mental health treatment center approved by the CONREP program director. You can't go back into CONREP without the court's approval.

What is TANGI?

If the CONREP program director believes that you are dangerous and an imminent risk of harm to yourself or others, you can be sent to a mental health facility before your revocation hearing. This is called TANGI status or Confinement Pending a Revocation Hearing. You must be confined at a facility near the courthouse that will continue to provide treatment and adequate security and, to the greatest extent possible, minimize interference with your treatment program.

The CONREP director can confine you to jail only if the jail will provide treatment and adequate security, minimize interference with your program, and ensure the safety of both you and the general population of the jail. If you are confined in jail, the law says you must be kept separate from the general population.

If you are confined in jail, the CONREP director must submit, within one day of your commitment, a written application to the court stating why you need to be in jail. The court must consider the application, and rule on it. Within three days of your confinement the CONREP director must tell the court what treatment you are getting while in jail. If you are not being given

the right treatment, or if being in jail is inappropriate, the court can order you transferred to an appropriate facility, including a state hospital.

While on TANGI status, you have a right to challenge your confinement by submitting a writ of habeas corpus. You also have to be told your rights.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.