

California's Mental Health Diversion Courts: Navigating Failures and Charting Solutions

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California's mental health diversion program, formalized under Penal Code section 1001.36 in 2018, aimed to provide an alternative path for defendants with mental health disorders within the criminal justice system (Vera Institute of Justice, 2016)ⁱ. The core idea was simple yet powerful: offer treatment instead of punishment, potentially dismissing charges upon successful completion of a diversion program. This approach promised to reduce recidivism, alleviate jail overcrowding, and provide much-needed treatment to a vulnerable population (Heilbrun et al., 2012). Since then, 41 of California's 58 counties have established some form of an adult mental health court (Judicial Council of California, 2024).

Confronting the Failures

While overall preliminary research and data suggest that mental health diversion has largely had the success that was expected (Schneider, 2010; Substance Abuse and Mental Health Services Administration, 2015),

the implementation of these programs in California has fallen short in several critical areas. One key issue is limited accessibility, as many eligible defendants never get the opportunity for diversion. Overworked public defenders, stringent eligibility criteria, and a lack of resources in rural areas have created a system where access is often determined by geography and luck rather than need. For example, individuals may be ineligible solely due to their insurance coverage (Sizemore et al., 2024).

Similarly, even when diversion is granted, the lack of appropriate treatment facilities and programs has led to long waitlists and suboptimal care (Substance Abuse and Mental Health Services Administration, 2005). There is still a strong need for supportive housing options and outpatient community-based treatment facilities, among other valuable resources (CSG Justice Center, 2024). This shortage is particularly acute for those with co-occurring substance use disorders (Levin et al., 2023).

Inconsistent application of who does or does not get to benefit from mental health diversion remains. The discretion given to judges and prosecutors in granting diversion has led to wildly inconsistent outcomes across counties and even within courtrooms (CSG Justice Center, 2024). This disparity undermines the principle of equal justice under the law. Insufficient follow-up or robust mechanisms for tracking participants' progress post-program make it difficult to

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assess long-term effectiveness and provide continued support (Center for Health and Justice at TASC, 2013).

Finally, the persistent stigma surrounding mental illness continues to influence decision-making at all levels of the justice system. A statewide survey on the topic conducted by The Council of State Governments Justice Center (CSG Justice Center), for example, revealed a need for “debunking myths of dangerousness” about participants in diversion programs (CSG Justice Center, 2024; Fidler, 2005ⁱⁱ; Belenko et al., 2013). On the contrary, the presence of a dedicated judge who understands the nuances of mental health issues can significantly impact a participant's experience.

Charting a Path Forward: Proposed Solutions

While these challenges are significant, they are not insurmountable. Possible solutions could include creating standardized and expanded eligibility in order to develop clear, more consistent statewide guidelines for diversion eligibility, thus reducing drastic disparities between different counties. Expansion should include a broader range of mental health conditions and offense types. With that, must follow increased state funding to develop treatment facilities, hire specialized staff, and create more comprehensive diversion programs. For instance, partnerships with medically assisted treatment (MAT) programs have shown a reduced risk of recidivism and relapse (Egli et al., 2009). This investment would likely pay dividends in reduced incarceration costs and improved public

safety.

Similarly, implementation of mandatory training programs – with a focus on cultural competency – for judges, prosecutors, and defense attorneys on mental health issues, available treatment options, and the long-term benefits of diversion are essential (Cross et al., 1989; Substance Abuse and Mental Health Services Administration, 2005). This can help combat stigma and promote more informed decision-making.

Collaboration with law enforcement to create more opportunities for diversion before arrests are made, potentially through crisis intervention teams and community-based treatment referrals, could reduce the setbacks deriving from the criminalization of mental illness.

In order to truly measure successes, improved data collection and analysis should be mandated. The State should establish a centralized system for tracking diversion outcomes, including long-term recidivism rates and quality-of-life improvements for participants. The use of this data will be critical to continually refine and improve the program. Additionally, efforts should be made to monitor the demographics of diversion participants for tailoring culturally competent treatment programs (Sizemore et al., 2024).

Most importantly, jurisdictions must create a continuum of care. Strong partnerships between the court system, community mental health providers, and social services are essential to ensure a seamless transition

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from diversion programs back into the community with ongoing support and monitoring as needed. Creating comprehensive discharge planning, for example, can decrease the chance of recidivism for offenders with mental illness by identifying and arranging services needed to live successfully in the community (Judicial Council of California, 2011).

California's mental health diversion courts represent a critical step towards a more humane and effective criminal justice system. However, the gap between vision and reality remains substantial. By acknowledging the current failures and actively working towards implementable solutions, we can realize the full potential of these programs. The challenges are significant, but the potential rewards – in terms of lives improved and communities strengthened – make this effort not just worthwhile but essential.

If you are a practitioner or researcher engaged in new or novel mental health diversion initiatives and would like to see your work highlighted, contact Krisztina Gula at krisztinapetra.gula@fulbrightmail.org.

ⁱ There has also been more recent legislation that impacts mental health diversion: Senate Bill No. 1223 – mental disorder based on prior reports; Assembly Bill No. 2526 – sharing of records between CDCR (California Department of Corrections and Rehabilitation), DSH (Department of State Hospitals), and counties; and Assembly Bill No. 1412, which removed borderline

personality disorder from the mental disorders excluding a defendant from eligibility for pretrial mental health diversion.

ⁱⁱ Finding that interaction with the judge is of paramount importance.

References:

Belenko, S., Hiller, M., Hamilton, L. (2013). Treating substance use disorders in the criminal justice system. *Current Psychiatry Reports*, 15(11).

<https://doi.org/10.1007/s11920-013-0414-z>

Center for Health and Justice at TASC. (December 2013). *A National Survey of Criminal Justice Diversion Programs and Initiatives*. 28.

https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report_web.pdf

Cross, T. L., Bazron, B. J., Dennis, K. W., & Isaacs, M. R. (1989). *Towards a Culturally Competent System of Care: A Monograph on Effective Services for Minority Children Who are Severely Emotionally Disturbed*.

Washington DC, Georgetown University Child Development Center. 13.

CSG Justice Center. (June 2024). A Statewide Look at Mental Health Diversion:

Recommendations to California's Council on Criminal Justice and Behavioral Health. 5–7.

https://www.cdcr.ca.gov/ccjbh/wp-content/uploads/sites/172/2024/07/A-Statewide-Look-at-Mental-Health-Diversion_5.2.2024_v3_AOADA.pdf

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Egli, N. M., Pina, M. S., Skovbo Christensen, P., Aebi, M. F., Killias, M. (2009). Effects of drug substitution programs on offending among drug addicts. *Campbell Collaboration Systematic Reviews*, 5(1). 16.
<https://doi.org/10.4073/csr.2009.3>.

Fisler, C. (2005). Building trust and managing risk: A look at felony mental health court. *Psychology, Public Policy, and Law*, 11(4), 587–604.
<https://psycnet.apa.org/doi/10.1037/1076-8971.11.4.587>

Heilbrun, K., DeMatteo, D., Yasuhara, K., Brooks-Holliday, S., Shah, S., King, C., Dicarolo, A. B., Hamilton, D., & Laduke, C. (2012). Community-based alternatives for justice-involved individuals with severe mental illness: Review of the relevant research. *Criminal Justice and Behavior*, 39(4), 351–419.
<https://psycnet.apa.org/doi/10.1177/0093854811432421>

Judicial Council of California. (April 2024). *Collaborative Justice Courts: Fact Sheet*. 1.
https://www.courts.ca.gov/documents/CollaborativeCourts_factsheet.pdf

Judicial Council of California, Administrative Office of the Courts, Center for Families, Children, & The Courts. (April 2011). *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report, Recommendations For Changing The Paradigm For Persons with Mental Illness in The Criminal Justice System*. 41.
https://preview.courts.ca.gov/sites/default/files/courts/default/2024-08/mental_health_task_force_report_042011.pdf

[pdf](#)

Levin, J. S., Cantor, J. H., McBain, R. K., Eberhart, N. K., Crowley, C., Estrada-Darley, I. (2023). Psychiatric and Substance Use Disorder Bed Capacity, Need, and Shortage Estimates in California: Merced, San Joaquin, and Stanislaus Counties. *Rand Health Quarterly*, 10(2).
<https://www.rand.org/pubs/periodicals/health-quarterly/issues/v10/n2/06.html>

Schneider, R. D. (2010). Mental Health Courts and Diversion Programs: A Global Survey. *International Journal of Law and Psychiatry*, 33(4), 201–202.
<https://dx.doi.org/10.1016/j.ijlp.2010.07.001>

Sizemore, A., Kelly, B., Breaux, C., & Holliday, S. B. (2024). Equity considerations in mental health diversion in California. *Journal of Offender Rehabilitation*, 63(3), 131–150.
<https://doi.org/10.1080/10509674.2024.2320442>

Substance Abuse and Mental Health Services Administration. (2005). *Substance Abuse Treatment: For Adults in the Criminal Justice System*. Treatment Improvement Protocol (TIP) Series, 44. 7 Treatment Issues in Pretrial and Diversion Settings. Rockville, MD: Substance Abuse and Mental Health Services Administration.
<https://www.ncbi.nlm.nih.gov/books/NBK572952/#>

Vera Institute of Justice. (2016). *What is Diversion? The Human Toll of Jail*.
<https://www.vera.org/the-human-toll-of-jail-2016/judging-without-jail/what-is-diversion>