

Mental Health Diversion -A Call to Action

Forensic Mental Health Association of California

Annual Conference

Thursday, March 14, 2019

AB 1810, eff. June 27, 2018, & SB 215, eff. Jan. 1, 2019

- ▶ Created PC 1001.36, discretionary mental health diversion for defendants in criminal proceedings, and amended PC 1370.
- ▶ Created “diversion grant fund” (\$100 million, statewide), to be used for community based treatment for defendants suffering from 3 specified mental illnesses, who are 1370-IST *or* “at risk” of becoming 1370-IST.

Eligibility Criteria

- ▶ Pretrial (so, not eligible if post-plea/verdict)*
- ▶ Charged with a Misdemeanor *or* Felony, excluding:
 - ▶ murder or voluntary manslaughter,
 - ▶ any offense listed in subdivision (c) of section 290, except for PC 314, or
 - ▶ PC 11418 (weapons of mass destruction).
- ▶ D suffers from a mental disorder (DSM-V)
 - ▶ “Excluding” ASPD, BPS, and Pedophilia
 - ▶ Evidence to be provided by D and “shall include” a recent diagnosis by “a qualified mental health expert”.
 - ▶ Expert may rely on examination of the D, D’s medical records, arrest reports, *or* any other relevant evidence.

Eligibility Criteria (cont.)

- ▶ D's mental disorder was a significant factor in the commission of the charged offense.
 - ▶ Court can review any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, statements by D's mental health tx provider, medical records, reports of qualified experts, etc.
- ▶ In the opinion of qualified health expert, D's symptoms of the mental disorder which motivated the criminal behavior would respond to MH treatment.

Eligibility Criteria (cont.)

- ▶ The court must be satisfied that D will not pose “an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community.” (Prop 47 standard of dangerousness).
 - ▶ May consider any relevant factors, including opinions of DA, defense, or a qualified MH expert.
- ▶ D must consent to diversion and waive right to a speedy trial, unless D is mentally incompetent, in which case criminal proceedings are already suspended and D cannot give valid legal consent to diversion.
- ▶ D must agree to comply with treatment as a condition of diversion.

Prima Facie showing

- ▶ The court may require, at an informal hearing, that the defendant make a “prima facie” showing that the defendant is eligible and suitable for diversion.
- ▶ The PF hearing may proceed on “offers of proof, reliable hearsay, and argument of counsel”.
- ▶ If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate; i.e. send out for “mental health court” assessment.
- ▶ If a prima facie showing is made, the court may set another hearing to receive evidence as to D’s eligibility/suitability.

People's rights at a PC 1001.36 hearing

- ▶ To cross-examine qualified mental health expert, whose opinion is offered by D and to introduce evidence relevant to rebut the expert's opinion.
- ▶ To introduce reliable and credible evidence to show that Defendant's mental disorder was *not* a significant factor in the commission of the charged offense or that the disorder which did motivate the defendant's criminal behavior would not respond to mental health treatment.
- ▶ To offer the prosecutor's opinion and to provide information regarding D's criminal hx, hx of violence, facts of the current charged offense, and any other relevant information.

If the court finds D eligible, ...

- ▶ The court may grant pretrial diversion for up to two years.
- ▶ The court may refer D to a MH tx program, “utilizing existing inpatient or outpatient mental health resources”.
 - ▶ Court may refer to county mental health, existing collaborative courts, or assisted outpatient treatment, but only if that entity has agreed to accept responsibility for treating D, meaning:
 - ▶ Resources must be available, and
 - ▶ D must be eligible to receive those services
- ▶ If requested, court must conduct a hearing regarding restitution owed to any V as a result of the diverted offense (PC 1202.4(f)), and order payment of restitution during the period of diversion.

Diversion “wash-out” provision

- ▶ After notice and a hearing, the court may reinstate criminal proceedings, modify treatment, or refer D to PG for conservatorship investigation, should any of the following occur during the period of diversion:
 - ▶ D is charged with a new misdo reflecting violent propensities, alleged to have occurred during the period of diversion
 - ▶ D charged with a new felony of any kind, allegedly committed during diversion
 - ▶ D engaged in criminal conduct rendering him “unsuitable” for diversion
 - ▶ Qualified mental health expert opines either that D is performing unsatisfactorily in treatment or that D is gravely disabled.

Success on diversion

- ▶ Success is defined as “substantial compliance with the requirements of diversion,” avoiding “significant” new law violations unrelated to D’s mental health condition, and the existence of a plan for long-term mental health care.
- ▶ At the end of the period of diversion, if the defendant has performed satisfactorily, the court shall dismiss the criminal charges underlying the grant of diversion, the arrest shall be deemed never to have occurred, the record of the arrest shall be sealed, and the arrest cannot be used to deny employment, benefit, license, or certificate, except DOJ may disclose the arrest to any peace officer application request, and D must disclose it when applying for a job as a peace officer, and

Diversion records are admissible at trial, if relevant to a fact at issue.

A finding that the defendant suffers from a mental disorder, progress reports concerning the defendant's treatment, or other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution.

Prima Facie Showing

- ▶ Do I need an expert? If so, what type of expert? How do I get such an expert?
 - ▶ For recent diagnosis?
 - ▶ For “significant factor in the commission of the offense”?
 - ▶ For “symptoms would respond to treatment” showing?
 - ▶ For “not likely to commit a superstrike if diverted” showing?
 - ▶ For treatment plan?
- ▶ Do I disclose my client’s (confidential) records for the PF hearing? Do I have to disclose them to the D.A. at this stage? Do I have to “file” them?

Lt. David Petrocelli
Los Angeles County Deputy Sheriff, Advocate
For Change

▶ ***The “Man in the mirror”
segment.***



Don't look away!





Feel better about this?





Persons with Mental Illness in LA County Jails

2009
2,576
 Combined Total



2018
4,962
 Combined Total

LASD Mental Health Count 02/06/18

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 01/02	2018 01/10	2018 01/17	2018 01/24	2018 01/30	2018 02/06																			
MALE	HOH - SM - FIP	21	17	18	25	25	24	26	28	26	30	26	25	21	22	25	HOH	22.6%																	
	HOH - SM	132	285	119	268	140	305	255	355	307	428	329	475	476	641	564			750	636	842	695	943	711	909	700	929	689	918	683	947	677	920		
	HOH - DM	132		132		147		75		96		122		139		158				180		218		172		204		208		242		218			
	MOH - SM - K10	N/A	1205	N/A	1196	N/A	1186	N/A	1301	25	47	84	1848	75	2057	59			2229	61	2410	62	2357	63	2522	64	2387	60	2317	60	2377	66	2408	MOH	59.1%
	MOH	1205	1205	1196	1186	1301	1301	1286	1311	1535	1582	1764	1848	1982	2057	2170			2229	2349	2410	2295	2357	2459	2522	2323	2387	2317	2377	2342	2408				
	GPm - MCJ							358		506		615		661		620				622		607		631		654		693		746		746			
	GPm - TTCF		562		525		629		881		744	443	814	80	595	24			647	28	701	33	667	36	670	41	659	42	682	39	703	43	746		
GPm - PDC							13		9		8		12		14		12		11		9		10		10		10		10						
Total	2052	1989	2120	2537	2483	2871	3084	3454	3772	4020	3936	4110	3987	4027	4074																				
FEMALE	HOH - SM - FIP	8	14	13	8	8	9	11	10	9	5	8	9	11	11	9	HOH	29.4%																	
	HOH - SM	72	80	90	104	76	89	97	105	133	141	152	161	188	199	225			261	158	212	188	285	202	290	208	295	190	275	181	258	192	261		
	HOH - DM	N/A		N/A		N/A		26				45		92		80		78		74		66		60											
	MOH		184		181		120		164		178		180		203				212		257		285		264		259		270		272		292	MOH	32.9%
	GPm		260		201		237		329		280		256		224				270		336		320		323		327		328		332		335		
Total	524	486	446	598	599	597	626	743	805	890	877	881	873	862	888																				

309 male Mental Health Moderate Observation Housing (MOH) classified inmates from Pitchess Detention Center (PDC) are included in male "MOH" number.



KELLY MORRISON





Trieste



WHO CC for Research and Training in Mental Health Trieste - Azienda Sanitaria Universitaria Integrata di Trieste

FRANCA AND FRANCO BASAGLIA INTERNATIONAL SCHOOL - THE PRACTICE OF FREEDOM

The right

[and opportunity]

to have a

[whole]

life

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