



CCJBH Diversion and Reentry Workgroup Meeting

Friday, May 13, 2022

3:00 PM - 5:00 PM

In-Person and Zoom Meeting

Workgroup Purpose: This workgroup will focus on presentations related to the implementation of Senate Bill (SB) 317, followed by Councilmember and participant discussion.

Councilmember Advisors:

Mack Jenkins, *Chief Probation Officer, Retired, San Diego County*

Stephen Manley, *Santa Clara County Superior Court Judge*

Tony Hobson, *PhD, Behavioral Health Director, Plumas County*

CCJBH Staff:

Brenda Grealish, *Executive Officer, Council on Criminal Justice and Behavioral Health (CCJBH)*, Elizabeth Vice, Emily Grichuhin, Jessica Camacho Duran, Monica Campos, Paige Hoffman, Catherine Hickenbotham, Kamilah Holloway and Daria Quintero.

I. Welcome & Introductions

Ms. Grealish welcomed participants to the meeting and gave an overview of the agenda.

II. Diversion Technical Assistance Contract Update

CCJBH began their *Mental Health Diversion: Consultation, Technical Assistance & Policy Recommendations* contract with the Council of State Governments (CSG) Justice Center in July 2021. The focus of the contract is on diversion, consultation, and technical assistance to expand or sustain local capacities. The CSG Justice Center has been moving through this project by hosting learning communities, listening sessions, and topical work-through sessions. They have been providing technical assistance to counties who have volunteered to participate and who are or will be implementing diversion in their counties. All the information gathered by the CSG Justice Center from learning communities, listening sessions, and topical work-through sessions will be compiled into a final report that includes recommendations to expand mental health diversion in California. CCJBH anticipates that the report from the CSG Justice Center will be completed in December 2022.

III. SB 317: Background and Implementation

Laura Arnold, JD, *Santa Barbara County Public Defender's Office*



Henry Bratton, *Program Manager, Office of Diversion and Reentry, Los Angeles County*

Katie Herman, *Senior Policy Analyst, Behavioral Health, Council of State Governments Justice Center*

Deanna Adams, *Senior Analyst, Criminal Justice Services, Judicial Council of California*

William Oglesby, Psy.D., *Deputy Director, Forensic Services, San Bernardino County Department of Behavioral Health*

Laura Arnold: Prior to January 21, 2022, Penal Code 1001.36 mandated restoration treatment for individuals charged with a misdemeanor offense who were found incompetent to stand trial (IST). Restoration treatment was provided in the jail setting because of lack of placement in outpatient treatment opportunities. The treatment was focused on educating and helping individuals understand the entire court process. Oftentimes, individuals had to be released because their jail sentences were over, but they had not been restored to competency and their mental illness had not been fully treated. Because individuals were not adequately treated, a cycle of incarceration started among these individuals. This process was not effective due to the barriers that this vulnerable population face. SB 317 was created to make a change within this population because using jails as a treatment center was not effective. Effective January 1, 2022, there is no longer any mandatory competency restoration authority with regard to people who are in the criminal justice system based on misdemeanor charges. The goal is to direct this population to the appropriate level of care as quickly as possible and engage them in voluntary treatment. Upon finding that a defendant is IST, the court must consider them for mental health diversion. If an individual is found eligible, the court must grant diversion. If an individual is found ineligible, or does not succeed on diversion, the court must refer the individual to County Behavioral Health for a possible petition for Assisted Outpatient Treatment (AOT), dismiss the charges and order the defendant to be released or refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings. It is important to identify this population and try to engage them at the earliest possible stage.

Henry Bratton: The placement of juveniles in housing is very crucial. You cannot put juveniles in housing placements that are uncomfortable and restricting. This population needs gentler care. SB 317 is a great policy because it is similar to old policies for adult offenders. The goal is to get both adults and juveniles treatment before criminal and delinquent behavior starts. Los Angeles County had a diversion program for adults and recently launched a couple diversion programs for juveniles.

Katie Herman: The CSG Justice Center held a Diversion Learning Community session with participants who were interested in discussing SB 317. The discussion topics are as follows:

- The group discussed some challenges of SB 317, such as statutory time frames when someone is found IST, inability to compel medication compliance, treatment buy-in from participants with limited insight, lack of locked inpatient transitional facilities, overburdened conservatorship system, insufficient jail discharge planning and warm handoffs, and immediate 5150 hospital discharges.
- The group discussed recommendations for how to address some of the issues that were raised. It is important to implement crisis services and pre-arrest diversion programs to divert individuals from entering the criminal justice system to begin with. Other recommendations include more funding and resources for conservatorship systems, extended time frames for case dispositions, increasing opportunities for jail in-reach and warm handoffs to treatment, additional training and resources for defense attorneys around motivational interviewing and engagement of psychiatrically unstable clients, and efficient 5150 processes from jails to hospitals for inpatient evaluation. Offering concrete incentives for people and utilizing peers and peer support specialists was another important recommendation discussed.

Deanna Adams: There are 58 different court processes. The information presented today may not speak to all courts, but will look at the challenges that courts have raised to date. The courts would like to implement SB 317 in a way that is responsive to all individuals' needs to provide the best legal, health, and justice outcomes. Ms. Adams focused on three different perspectives of SB 317.

- The courts are looking at how people affected by SB 317 are going to be connected to mental health diversion. As courts have begun implementing Assembly Bill (AB) 1810, challenges have risen on how courts are going to connect people to medically appropriate treatment, as well as culturally responsive treatment. As courts were dealing with the COVID-19 pandemic responses, they were thinking of ways to take the lessons learned during that time period and implement a process that will help people who are being diverted through SB 317. Courts are now looking at how mental health diversion is going to be filtered within the court process.
- The courts are focusing on how to impact people in AOT. AB 1976 was implemented on July 1, 2021, and required courts to begin implementing AOT. There were many counties who were not able to do this at the time, so many counties are not yet offering AOT. Courts are looking how to operationalize for people who are not yet moving through SB 317 while simultaneously working with the counties who are going to be moving to the SB 317 process.

- In 2021, there were conversations with the California Health and Human Services Agency and the Department of State Hospitals (DSH) regarding felony IST, misdemeanor IST, and the need for dedicated conversations broadly focused on IST. The focus of those conversations were how courts and counties are connecting individuals to services and medication while individuals are held in jail and going through the IST process. There are also concerns about maintaining a sufficient pool of evaluators that the courts can utilize to evaluate people.

As CCJBH is making legislative priorities, Ms. Adams recommends that previous conversations on the IST population be addressed.

William Oglesby: There are two populations that are the focus of diversion: felony IST and those who fall under the criteria of Penal Code 1001.36. In San Bernardino County, the felony IST population is treated through the DSH Diversion Demonstration project. The other program provides general mental health diversion under Penal Code 1001.36. Before SB 317, an outreach team would complete an eligibility assessment, provide a service recommendation and have the information sent to the court within 14 calendar days. Teams would go into the jails and the community. When diversion is granted and connected to program, the program outreach staff would make sure the defendant had a supply of medication prior to release. They would also work to identify housing for the defendants and coordinate transportation. The majority of those assessments would be referred to DSH. With SB 317, the process is similar, but there are some caveats. Due to the 14 day evaluation period being difficult to meet, San Bernardino County Behavioral Health now evaluates defendants based on their court dates. This has resulted in less misdemeanor referrals. The conservatorship unit is happy about this change because the amount of referrals is often overwhelming. Another benefit of SB 317 is that felony IST cases are being referred directly to DSH Diversion Demonstration project for placement recommendations. San Bernardino County has short circuited the process and is now able to treat individuals within their DSH Diversion Program.

Approximately 10 to 12 courts handle diversion cases. Working with the courts to establish a more standardized process is a main goal. It would also be beneficial to be more aggressive with waitlist reviews to make sure no individuals are missed who are appropriate for diversion. It is also a goal to be able to identify potential diversion consumers. Lack of housing and staffing difficulties are barriers that get in the way of these goals. There are also inefficient work flows and geographical issues.

IV. Q&A with Councilmember Advisors

Q: Chief Jenkins asked for more information on what supervised release is.

A: Ms. Arnold stated that probation provides the pre-trial supervised release in Santa Barbara County. When a person is charged with a criminal offense, the judge sets bail at the initial court hearing. At this time, the judge considers an

individual's criminal history. Oftentimes, unsheltered homeless clients have a history of failure to appear in court, so they are not good candidates for release on their own recognizance. This contributes to why the homeless population is held in jail for minor charges because judges do not have confidence that this population will go back to court when scheduled to. Supervised release, which has been expanding statewide, allows for a level of reporting and supervision that would not otherwise exist for a person who is released on their own recognizance and told to come back to court on a date. Reentry begins at arrest, so individuals need to begin receiving services at this time. Santa Barbara County has a supervised release program in place, so it allows individuals in the pre-contemplation stage of change to consent to treatment as a condition of supervised own recognizance release. This can happen prior to arraignment by providing the court with services that can be provided to the defendant at release, but this can only happen if these services exist. Giving this population the option to not go to jail can get us to a point where this population is not IST and where the clients want to continue with the diversion programs.

- Q:** Chief Jenkins asked for examples of some ordered conditions on supervised release.
- A:** Ms. Arnold stated that Santa Barbara County is still at the implementation stage of this idea, but meet regularly to discuss conditions. Some concrete conditions are that there is no use or possession of any controlled substance without a prescription and participants must submit a drug test when asked by a supervised release officer. GPS can also be used as a tool of supervision, which allows placement in an unlocked facility of someone who would potentially walk away if they were not subject to GPS. There will be peer navigators that clients can talk to when they feel they are not being heard.
- Q:** Chief Jenkins asked if the Public Defender's Office started tracking any outcomes on supervised "own recognizance" releases.
- A:** Ms. Arnold stated no tracking has begun because the idea is still at the implementation stage.
- Q:** Chief Jenkins asked what the judges spoke about at the DSH diversion project activities.
- A:** Ms. Herman stated the discussions did not mention SB 317, but they were around the same lines. Judges can help motivate participants in diversion by utilizing motivational interviewing and sanctions and rewards. Recovery is not a linear process and treatment needs to be flexible. The discussion also included how judges can work with victims in cases where diversion is being considered. Throughout the learning community, the discussion was often around eligibility for diversion.

- A:** Judge Manley stated judges are struggling with diversion because it is a new program. There is pending legislation that may clarify a number of issues, but it is still very complicated to the general public. The Legislature is considering a bill to shift the burden from the defense to the prosecution relating to identifying whether or not mental illness played a significant role in the commission of crime, which is a challenge for judges and also a public safety concern. The appellate courts have made it clear that the intent of the Legislature is that only super strikes would disqualify someone from diversion. As time has gone by, we have seen more diversion take place, and that is due to judges becoming more comfortable with the process. Diversion is a work in progress, so patience is key.
- Q:** Chief Jenkins asked if the topics discussed during the DSH diversion project activities are being touched on in the Judicial Council in terms of the judge's roles.
- A:** Ms. Adams stated that they are. There is a question of resources available as courts are looking to move people into diversion. Courts are looking at the availability of services and if they are accessible. The services must also be responsive. The courts are looking at procedural justice, as well to make sure the clients and stakeholder experience are as easy as possible.
- Q:** Judge Manley asked Ms. Arnold if she had any suggestions or modifications for any statutes to help stakeholders do a better job in terms of implementation for diversion.
- A:** Ms. Arnold stated she has suggestions in terms of the mental health diversion statute. A significant flaw is that the statute creates a barrier for judges who want to have full hearings with individuals to make the right decision about diversion. When AB 1810 was enacted, there was no screening-out provision. The court was entitled to a full hearing. That statute was amended by SB 215, which was a response to outcry on the behalf of law enforcement and the superior courts that everyone would be applying to diversion. There was a concern that if courts were consumed with such a quantity of hearings, they would not be able to make the right decision within a reasonable amount of time. There was verbiage in SB 215 which allowed for courts to ask for a prima facie showing from the defense council before ordering a hearing. The problem with that is that in the prima facie showing, it goes far beyond information that the defense council could present. They required the defense to prove that if the defendant receives treatment in the community, he or she will not pose an unreasonable risk to public safety. It makes it difficult for behavioral health departments to figure out where to put their resources. No one can decide a safety plan until the treatment plan, assessment of the individual, and the appropriate level of care have been determined. It is very difficult to prove this at a prima facie showing. We have to stop criminalizing

substance use disorders and mental health symptoms and try to start understanding a person as a whole.

Q: Judge Manley stated many misdemeanor IST individuals do not feel they are mentally ill and do not want to consent to treatment. They want to prove their innocence. Each program has different criteria. It would be a better system if people could be referred to treatment instead of trying to meet all other criteria's for so many programs. There is discussion that judges want more time, but that is what we have been doing wrong. The time should be shortened. We need to change our expectations. Individuals will not be restored to competency in six months. This topic needs more thought. We need to intervene prior to booking and before individuals get to the court.

A: Mr. Oglesby stated he has a unique perspective because he worked in state prisons across the United States for 12 years. The number of individuals that are being incarcerated who present with extraordinary mental illness is rising in California. The prisons and jails nationwide are becoming state hospitals. It is rare that mental health presentation occurs in later life. If you successfully address mental health issues in time, there will be a reduction in crime. The Sheriff's Department has begun discussing how to identify individuals who are frequently arrested, particularly for quality of life crimes. If individuals are being arrested for the commission of crimes due to their mental illness, again, if we address mental illness, there will be less rearrests. Lack of funding keeps the community from doing this. Most counties' behavioral health departments are understaffed, so working collaboratively with Sherriff departments, probation departments, criminal justice consensus committees, etc., are great opportunities to start this process.

Public Comment

Q: A participant stated she has been working in the correctional system and with the behavioral health population for 25 years. Jails and prisons serve this population quite often. Because you cannot deny going to jail, the criminal justice system became the "catch all" for people who are the least behaviorally regulated. There is a missing piece, which is involuntary treatment. Individuals in jail often decline mental health treatment in jail even with incentives on the table. AOT does not adequately serve this population and neither does conservatorship. SB 317 does not address the people who are most severely mentally ill, the most acute who often have behavior problems. We need an involuntary treatment option for these individuals or they will continue to slip through the cracks.

V. Announcements/Next Steps

The next Diversion and Reentry Workgroup is on July 15, 2022, from 2:00 to 4:00 PM. The next CCJBH Full Council Meeting is on July 29th, 2022 from 2:00 to 4:30



PM. If you would like more information, please visit [our website](#). CCJBH has been hosting May is Mental Health Awareness Month Lunch & Learn sessions once a week throughout the month. The next one will be May 18th, 2022 at 12:00 PM, which will feature the [Los Angeles Regional Reentry Partnership](#). The following Lunch & Learn will take place on May 27, 2022, at 12:00 PM and will feature the California Department of Public Health, who will be discussing their Community Mental Health Equity Project. Click [here](#) to register for any of these upcoming events.

VI. **Adjourn**