

Mental Health Diversion in California Survey Analysis

Overview

In FY 2018-19, the Council on Criminal Justice and Behavioral Health (CCJBH) received an annual allocation of \$150,000 for three years to provide expert consultation to the Department of State Hospitals (DSH) and counties on diversion best practices and policies for individuals who are at-risk of being declared incompetent to stand trial (IST) for felony offenses. As part of this effort, CCJBH contracted with The Council of State Governments (CSG) Justice Center to provide training and technical assistance to counties to develop, implement and operate pre-trial mental health diversion programs, as well as develop policy recommendations to support the successful implementation and expansion of mental health diversion throughout the state. To develop a training and technical assistance plan, in September 2021, CSG developed and distributed a statewide survey about mental health diversion practices in California. Numerous partners assisted with the development and dissemination of the survey, including the Judicial Council of California, the Department of State Hospitals, the California Behavioral Health Directors Association, the California State Association of Counties, the California Association of Public Defenders, the California District Attorneys Association, the California State Sheriffs Association, and the Chief Probation Officers of California.

The survey was designed to obtain feedback from a diverse group of respondents who have diversion programs in place or are seeking to implement them in the future. A total of 147 unique individuals, representing 52 counties, responded, with the top 3 types of responding organizations including county behavioral health—health and human services (29 percent), public defender offices (20 percent), and probation departments (16 percent).

Many counties had more than one respondent complete the survey, and some respondents from the same county had differing answers for certain questions. As an example, respondents were asked to answer the question, “Are mental health diversion programs or practices currently in place in your county?” In seven counties, respondents had differing answers to this question. The discrepancy in answers could speak to a need for more comprehensive communication about programs and practices within a county.

Survey Question Responses

Identifying Eligible Participants for Diversion Programs

The first set of survey questions focused on identifying people with mental health and/or substance use needs within a county jail to determine who might be eligible for mental health diversion.

Fig. 1. Mental Illness and Substance Use Identification in Jail

Survey Question	County Answer(s)¹
Does your county’s jail administer mental health screening universally at booking?	Yes: 67% (35 counties) No: 8% (4) Don’t know: 8% (4) Differing answers: 17% (9) Total counties responded: 52 counties
Does your county’s jail administer substance use screening universally at booking?	Yes: 58% (30) No: 10% (5) Don’t know: 19% (10) Differing answers: 13% (7) Total counties responded: 52 counties
Does your county’s jail administer involuntary medication orders (IMOs)?	Yes: 37% (19) No: 35% (18) Don’t know: 17% (9) Differing answers: 11% (6) Total counties responded: 52 counties

Many of the respondents who answered “Yes” to the use of mental health and substance use screening tools were not sure of the exact screening tools used by the county jail. However, they reported that there were assessment processes and procedures in place if an individual needed a mental health and/or substance use follow-up. Forty-eight percent of the responding counties indicated county behavioral health provides behavioral health services in their county jail, while 32 percent stated the agency who provides behavioral health services in jail is a contracted provider.

When describing eligibility for the mental health diversion programs, 77 percent of the counties indicated diversion was offered in their county for both misdemeanors and felonies. The criteria used for diversion program eligibility was most often reported as defined by state statute.

Later in the survey, respondents were asked, “Who completes the diversion assessment and develops a diagnosis when an individual is being considered for diversion?” Below were the most common responses:

- Court assigned evaluator
- County behavioral health
- Defense counsel obtains clinical assessment
- Private provider

Assessing the Landscape of Current Diversion Programs

¹ Many counties had multiple representatives complete the survey, but not all representatives provided the same response to a question. The category in the table titled “differing answers” reflects this discrepancy.

Fig. 3. Diversion Operations

Survey Question	County Answer(s)
Are mental health diversion participants supervised by the probation department in your county?	Yes: 46% (18) No: 33% (13) Don't know: 0% (0) Differing answers: 21% (8) Total counties responded: 39 counties
Is housing a condition of participation in mental health diversion?	Yes: 31% (12) No: 44% (17) Don't know: 2% (1) Differing answers: 23% (9) Total counties responded: 39 counties
Does your mental health diversion program use peer staff or staff with lived experience (e.g., certified peer specialists or uncertified peers) on their treatment teams?	Yes: 28% (11) No: 33% (13) Don't know: 6% (2) Differing answers: 33% (13) Total counties responded: 39 counties

Respondents were asked “What are the mental health diversion programs or practices” in their county. Some respondents provided brief overviews of the mental health diversion programs and practices, but most provided the bill or penal code authorizing certain diversion programs and practices. The following list includes a summary of the answers provided.

- Mental health courts
- AB 1810/PC 1370 Department of State Hospitals diversion; “Tier 1 and Tier 2 diversion programs”; PC 1001.36 Diversion of Individuals with Mental Disorders
- PC 1001.22 cognitive developmental disability diversion
- Prop 47 diversion
- AB 109 diversion
- AB 79-Alta diversion/dual Supervision
- Addiction intervention courts/Drug treatment courts
- Veterans’ diversion programs
- Assisted Outpatient Treatment
- Public Defender's office diversion
- Jail Based Competency Treatment (JBCT) program

Additionally, according to the survey responses, the agency that prepares the treatment plan for mental health diversion participants is typically the treatment provider; however, that can be either county behavioral health or a contracted provider

Identifying Barriers to Diversion Programming

The survey posed questions about the greatest barriers or challenges respondents encounter in implementing or sustaining mental health diversion in their county. The following table shows how respondents ranked the topics, from one being the greatest challenge to seven being the least challenging.

Fig. 4. Barriers to Diversion

Topics	Responses
Lack of housing for diversion participants	42% of respondents ranked topic as #1
Funding for diversion programming	23% of respondents ranked topic as #2
Lack of willing participants and/or failure to comply with conditions of diversion	23% of respondents ranked topic as #3
Lack of coordination among local agencies, and Unclear referral processes³	19% of respondents ranked topic as #4 20% of respondents ranked topic as #4
Getting buy-in from judges or other criminal justice stakeholders	22% of respondents ranked topic as #5
Identifying appropriate candidates for diversion	18% of respondents ranked topic as #6
Developing appropriate treatment plans for participants	14% of respondents ranked topic as #7

Other challenges and barriers to diversion were mentioned multiple times in the survey results, such as training and myths about risk. Many of the responses about training and technical assistance needs focused on the need for violence risk assessment and how to develop an appropriate treatment plan based on the results of risk assessments. Multiple respondents also expressed a desire for more training on criminogenic risk, thinking and needs, and helping diversion stakeholders, particularly prosecutors and judges, to build “risk tolerance” for diversion. “Debunking myths of dangerousness” for diversion participants was also mentioned as a training need, and that training for judges related to this issue would be particularly beneficial.

Gleaning Results from Open-Ended Questions

There were several open-ended questions in the survey. Many of the answers to those questions are reflected in responses to other questions throughout the survey. Responses to the question, “In your opinion, what changes to state policy and laws would best facilitate improved use of mental health diversion across the state?” are highlighted below:

- Out of 83 responses to the question, 47 percent of respondents specifically mentioned funding. Some respondents indicated explicit areas to fund, including housing options (such as supportive housing), mental health assessments, and mental health diversion in rural counties.
- Other responses included:

³ These two barriers were a tie, both ranked as #4.

- More options for mental health treatment, specifically community-based treatment and/or increased funding to county behavioral health to offer outpatient treatment
- Dedicated mental health, medical, legal, and law enforcement staffing
- In-house mental health specialists for public defender offices

Recommendations that were mentioned several times by respondents include:

- Set mental health diversion as a presumption for certain crimes and/or criminal records, rather than as something that must be specifically requested. This would make the diversion the default, which could be argued against.
- Change the qualifying diagnoses⁴ to allow more people a chance to meet with a clinician to discuss the possibility of diversion.
- Clarify the eligibility statute for diversion to distinguish mental health vs. substance use disorders and to specify who is appropriate for mental health diversion.
- Be more prescriptive in statute around what "public safety" means.
- Provide training for criminal justice and behavioral health professionals on how each system works.
- Change laws to encourage diversion and connections to treatment at an earlier point in the criminal justice process.

Takeaways

As California looks to diversion as a means of reducing criminal justice involvement for people with behavioral health needs, this state-wide survey offers a perspective on the current state of practice and some opportunities.

First, it is worth noting that most counties—44 of 52 (85 percent of those responding)—reported that some type of mental health diversion program is in operation.

- Of these, most programs allow both misdemeanors and felonies.
- Among counties reporting, probation supervises participants in a little more than half of the counties (22/39), and housing is a condition of participation in a little less than half of the counties (18/39). Peer support specialists are part of the program team in about half the programs (20/39).

In looking to training and technical assistance needs and state policy opportunities, the survey reveals a few priorities:

- The lack of housing options is an issue raised throughout survey responses. State funding and guidance are needed to develop more supportive housing options for

⁴ It was not possible to determine from the response if the respondent is referring to eligibility for diversion funded by the California Department of State Hospitals or mental health diversion under the Penal Code generally. The California Department of State Hospitals does have more limited diagnostic eligibility than mental health diversion available through the Penal Code.

diversion participants. Many respondents reported lack of housing as the biggest barrier to implement or sustain diversion programs and practices.

- Relatedly, respondents identified funding as a major barrier to mental health diversion. With the extraordinary investments contemplated in the current state budget, attention should be paid to how counties can draw down different funding streams to support aspects of their mental health diversion work, particularly related to community-based treatment and housing.
- It is also worth noting, with regard to CCJBH’s goal of reducing criminal justice involvement for people with behavioral health needs, that only about 67 percent of reporting counties believe they are universally screening for mental illness at booking and only 58 percent report doing so for substance use. Given that about half of the jails are using contracted providers, this may be an underreporting of what is actually happening; however universal screening is a critical first step, both for early identification and for accurate accounting of jail prevalence.⁵
- In terms of legal recommendations, the concept of making diversion the presumptive choice for people with behavioral health needs was also a key takeaway of the survey, and the need for clarity around “public safety risk” in the diversion statute was also an important point to consider as a potential policy recommendation.
- Finally, the presence of discrepancies in reports from multiple counties suggests the need for additional interagency communication, including potentially the development of centralized materials about relevant programming. If all relevant stakeholders are not aware of programs in their counties, there is no way that they can support and sustain this important work.

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⁵ The CSG Justice Center, *Screening and Assessment for Behavioral Health Needs in California Jails Workshop Manual* (New York: CSG Justice Center, 2021), <https://csgjusticecenter.org/publications/screening-and-assessment-in-jails-and-using-data-to-improve-behavioral-health-diversion-programs/screening-and-assessment-for-behavioral-health-needs-in-california-jails-workshop-manual/>.

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