

ABA Standards

According to the 2016 ABA Criminal Justice Standards on Mental Health, "judges and prosecutors should consider treatment alternatives to incarceration for defendants with mental disorders that might reduce the likelihood of recidivism and enhance public safety."

"When making charging or dispositional decisions about a defendant who has a mental disorder, judges and prosecutors should consider referring the defendant for treatment, either voluntarily or, if appropriate, pursuant to existing law relating to involuntary hospitalization or mandated outpatient treatment."

ABA Standards 7-1.5 (a) and (d)

Diversion Works

- In Los Angeles, individuals released pretrial to ODR diversion programs were significantly less likely to be rearrested for a new offense than individuals released without ODR's support, and were more likely to appear in court than those not involved in ODR [1]
- 96% of Los Angeles' Rapid Diversion Program graduates have had no further contact with the system [2]



Diversion programs have many potential advantages: they connect individuals with needed treatment services, reduce the burden on correctional systems to provide these services, and can save costs without compromising public safety.

Office of Diversion and Reentry (ODR) Programs [3]

- **Permanent supportive housing program for individuals experiencing homelessness (ODR Housing):** This program is designed to serve individuals with a felony charge who are experiencing serious mental illness and homelessness. The program is offered to defendants pretrial. Some can be diverted pretrial through PC § 1001.36, but based on the seriousness of the charges, most plead guilty or no contest and are placed on probation to an ODR treatment program and housing. Individuals are then eligible to remain in ODR Housing after probation termination, as it reverts to permanent supportive housing with continued case management services for life.
- **Misdemeanor Incompetent to Stand Trial-Community Based Restoration Program (MIST-CBR):** This program serves individuals who are charged with misdemeanors and found incompetent to stand trial. Beginning on January 1, 2022 (Senate Bill 317), this population can no longer receive competency restoration services in a jail setting. The community-based settings are tailored to meet the needs and clinical acuity of the clients, ranging from acute inpatient to open residential settings.
- **Felony Incompetent to Stand-Trial-Community-Based Restoration Program (FIST-CBR):** This program serves individuals charged with felonies who are found incompetent to stand trial. People released to this program are placed in community-based restoration rather than waiting for state hospital slots.
- **DSH Diversion Program:** ODR receives funding from the Department of State Hospitals to divert individuals pursuant to PC § 1001.36 and provide services. This program is for individuals who are diagnosed with schizophrenia, schizoaffective disorder, and bipolar disorder and charged with a felony offense.

California Penal Code § 1001.36

- **PC § 1001.36** allows for the pretrial and pre-plea diversion of individuals charged with felonies or misdemeanors if a qualified mental health expert can identify a nexus between the offense and a mental health concern. The goal is to create a vehicle by which the Court can ensure that a defendant suffering from a qualified mental health condition obtains the treatment needed to avoid the risk of recidivism associated with untreated mental health conditions.

Alternatives to Incarceration Initiative [4]

- **Rapid Diversion Program ("RDP"):** This program aims to rapidly divert individuals from the jail to the community for mental health treatment at the earliest possible stage of the criminal proceedings. RDP defendants do not have to plead guilty to receive treatment and participate in the program. Eligibility is based on the statutory criteria found in PC 1001.36(b)(1). Eligible individuals are given an individualized treatment plan and aided through the process by Project 180, a local non-profit services provider or the Department of Mental Health.

Statistics

Understanding the Mental Health Population in Jails

- American jails now hold more than 730,000 people on any given day
 - About 64% self-report that they have mental health concerns [5]
- As of March 2022, around 43% of people in Los Angeles County jails have identified mental health needs [6]
 - 40% of men
 - 67% of women
 - According to a 2020 RAND study up to 61% of this population could be appropriate for community release [7]

Impacts of Incarceration on Individuals with Mental Illnesses

- Incarceration can exacerbate and worsen mental health conditions
 - In California, an estimated 89% of people in jail with mental illnesses do not receive any mental health care [8]
 - Suicide is the leading cause of death in correctional facilities, and as many as half of all suicides are committed by the estimated 15-25% of incarcerated persons with serious mental illness [9]
- Individuals with serious mental illness in jail are five times more likely to report they were sexually victimized while incarcerated than individuals with no mental illness [10]
- From 2010 - 2018, there were at least 404 deaths of people with mental illness in jails nationwide [11]
- On average, individuals with mental illnesses receive sentences that are 12% longer than individuals convicted of the same crime but without mental illness [12]

Resources

- **ABA Criminal Justice Standards on Mental Health**
 - <https://perma.cc/XP8F-9RAA>
- **Bench Cards on Approaching Mental Illnesses in the Courtroom**
 - <https://perma.cc/WN9U-YCVS>
 - <https://perma.cc/XGL8-36VX>
- **Judicial Branch of California Behavioral Health Resources**
 - <https://perma.cc/X5AL-TC4P>

Person-First Language

"A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge's direction and control." - California Code of Judicial Ethics

What is person-first language? [13]

- Emphasizes the person before the disability or condition
- People with disabilities and mental health disorders are, first and foremost, people. Labeling a person equates the person with a condition and can be disrespectful and dehumanizing. A person isn't a disability, condition or diagnosis; a person *has* a disability, condition or diagnosis
- Demonstrates respect and affirms personal dignity
- Helps end stigma instead of perpetuating it

Examples

- ✗ They are mentally ill/crazy/insane
 - ✓ They have a mental health disorder
 - *Tip: Try to refer to a specific disorder when possible*
- ✗ He's a schizophrenic
 - ✓ He has schizophrenia / he is diagnosed with schizophrenia
- ✗ She's an addict
 - ✓ She has a substance use disorder
- ✗ She is mentally retarded/special/differently-abled/challenged
 - ✓ He has an intellectual/developmental disability
 - *Tip: Try to avoid condescending euphemisms like "special" or "differently-abled"*

You can always ask to find out an individual's language preferences.

Footnotes

1. Office of Diversion and Reentry, *Clinical Programs Data Dashboard*, <https://dhs.lacounty.gov/office-of-diversion-and-reentry/our-services/office-of-diversion-and-reentry/clinical-programs/>
2. Los Angeles County Alternatives to Incarceration, *Rapid Diversion Program 2021 Year in Review* (2021).
3. Office of Diversion and Reentry, *Who We Are* <https://dhs.lacounty.gov/office-of-diversion-and-reentry/our-services/office-of-diversion-and-reentry/who-we-are/>.
4. Jess Bendit et al., *Interrupting the Cycle of Incarceration for Individuals with Mental Illness* (2021) UCLA Luskin Institute on Inequality and Democracy <https://luskin.ucla.edu/wp-content/uploads/2021/07/11RapidDiversionWY.pdf>.
5. KiDeuk Kim et al., *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System* (2015) Urban Justice Institute at p. V <https://www.urban.org/sites/default/files/publication/48981/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>.
6. Vera, *Care First L.A.: Tracking Jail Decarceration* (Ongoing) <https://www.vera.org/care-first-la-tracking-jail-decarceration>.
7. Stephanie Brooks Holliday et al., *Estimating the Size of the Los Angeles County Jail Mental Health Population Appropriate for Release into Community Services* (2020) RAND Corporation https://www.rand.org/pubs/research_reports/RR4328.html.
8. ACLU, *Reforming Money Bail* (2013) <https://www.aclu.org/docs/20170414-bail-reform-mental-health.pdf>.
9. California Health Policy Strategies, *Briefing data from Board of State and Community Corrections* (2020) https://calhps.com/wp-content/uploads/2020/02/jail_MentalHealth_IPSReport_02-03-2020.pdf.
10. *Id.* at p. 3.
11. Gary Haraki, *Horrific Deaths, Brutal Treatment: Mental Illness in America's Jails* (2019) Prison Legal News/The Virginian Pilot <https://www.prisonlegalnews.org/news/2019/may/2/horrific-deaths-brutal-treatment-mental-illness-americas-jails/>.
12. California Health Policy Strategies, *Briefing data*, *supra* at p. 3.
13. ADA National Network, *Guidelines for Writing about People with Disabilities* (2015) https://adata.org/sites/adata.org/files/files/ADANN_writing_guidelines_2015-FINAL.pdf