

# IMPLEMENTING MENTAL HEALTH DIVERSION

Hon. Stephen Manley  
Santa Clara Superior Court

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Los Angeles Superior Court

## LEARNING GOALS

1 Basic understanding of  
new mental health  
diversion law

2 Challenges for the court  
and justice partners

3 Framework and models  
for implementing mental  
health diversion



## ELIGIBILITY

### **Penal Code § 1001.36(b)(1)**

- (A) Diagnosed DSM-V disorder
- (B) Disorder played a significant role in charged offense
- (C) Disorder would respond to treatment
- (D) Waives speedy trial rights & consents to diversion (unless IST)
- (E) Agrees to comply with treatment
- (F) No unreasonable risk of danger if treated in community

## ELIGIBILITY

- Certain offenses are statutorily ineligible:
  - Murder/voluntary manslaughter
  - Sex offenses other than indecent exposure
  - Use of a weapon of mass destruction
- **Should** others be excluded?
  - DUI?
  - DUI with multiple priors?



## DEFENSE BURDEN

- Defense makes prima facie showing eligible and suitable
- Judge can deny if no prima facie showing
- Judge also needs to approve treatment program

## ELIGIBILITY VS. SUITABILITY

If the defendant is **eligible...**  is the defendant **suitable?**

Does the judge feel that:

- The offense is appropriate for diversion
- The defendant is appropriate for diversion
- Has the defendant shown the court meaningful offer of proof that he/she can meet the minimum requirements for diversion?



WHAT ABOUT THE RISK  
OF VIOLENCE IF  
DIVERSION IS GRANTED?



*PUBLIC PERCEPTIONS VS. REALITY*

## Public Perceptions Measured (2018)

60%

of those surveyed believe schizophrenia is directly related to violence against others

40%

of those surveyed believe that depression is directly related to violence against others

42%

of those surveyed fear random mass shootings

"The link between serious mental illness and risk of engaging in criminal behavior is relatively weak and applies to a relatively small number of people."

The same is true for the link between serious mental illness and risk of violence.

### THE REALITY



Pescosolido et al., Evolving Public Views on the likelihood of violence from people with mental illness: stigma and its consequences, Health Affairs 35, no. 10 (2019)

"Even if we had a complete cure for serious mental illness that eliminated active psychotic and mood disorders, violence would only be reduced by 4% while 96% of violent acts would still occur."

THE REALITY CONT.



Swanson JW, McGinty E, Fazel S, Mays VM. Mental illness and reduction of gun violence and suicide. *Ann Epidemiol*, 2015.



MENTAL HEALTH DIVERSION HAS BEEN DEMONSTRATED TO WORK WITH FELONY OFFENDERS CHARGED WITH SERIOUS OFFENSES.

**Behavioral Health Needs:**

- 33% schizophrenia
- 21% schizoaffective disorder
- 21% major depression
- 21% bipolar disorder
- 85% co-occurring substance use disorder

**Criminal Justice Involvement:**

- Post-indictment, facing prison for a felony
- 74% prior felony convictions
- 75% history of violence

2 Years (plan involves defendant)

- Pre-release collaboration with jail medical/mental health provider
- "Intrusive case management" small caseloads
- Benefits enrollment assistance
- Housing services
- Behavioral health treatment
- Accompaniment to court
- Engagement/counseling
- Hope/belief in client success

**Outcomes**


- Reduced arrests during program
- Program retention of 80% for two years
- All participants engaged in treatment
- 79% had housing in the year after intake

## THE NATHANIEL PROJECT (NYC, 2002)

National GAINS Center for People with Co-Occurring Disorders in the Justice System (2002). The Nathaniel Project: An alternative to incarceration program for people with serious mental illness who have committed felony offenses. Program Brief Series. Delmar, NY: Author.

"Crazy" "Criminal"

"Homeless" "Drug-addicted"



- Bias
- Distrust
- Prejudice
- Fear
- Avoidance
- Distress
- Anger
- Stereotyping

➤➤➤

- Reduced access to:
  - Treatment
  - Housing
  - Employment
  - Other services
- Perception of violence
- Discrimination

## ADDITIONAL CHALLENGES DUE TO STIGMA

Source: Surgeon General's Report on Mental Health (1999)




SHOULD YOU BE STRICT ON TREATMENT COMPLIANCE?



Or is this a harm reduction model, with multiple opportunities to succeed?



DECOMPENSATION AND RELAPSE ARE NORMAL



RECOVERY

Expectation Reality

The diagram shows two arrows pointing upwards. The arrow on the left is a straight line, labeled 'Expectation'. The arrow on the right is a jagged, wavy line, labeled 'Reality'. The word 'RECOVERY' is centered at the top of the diagram.





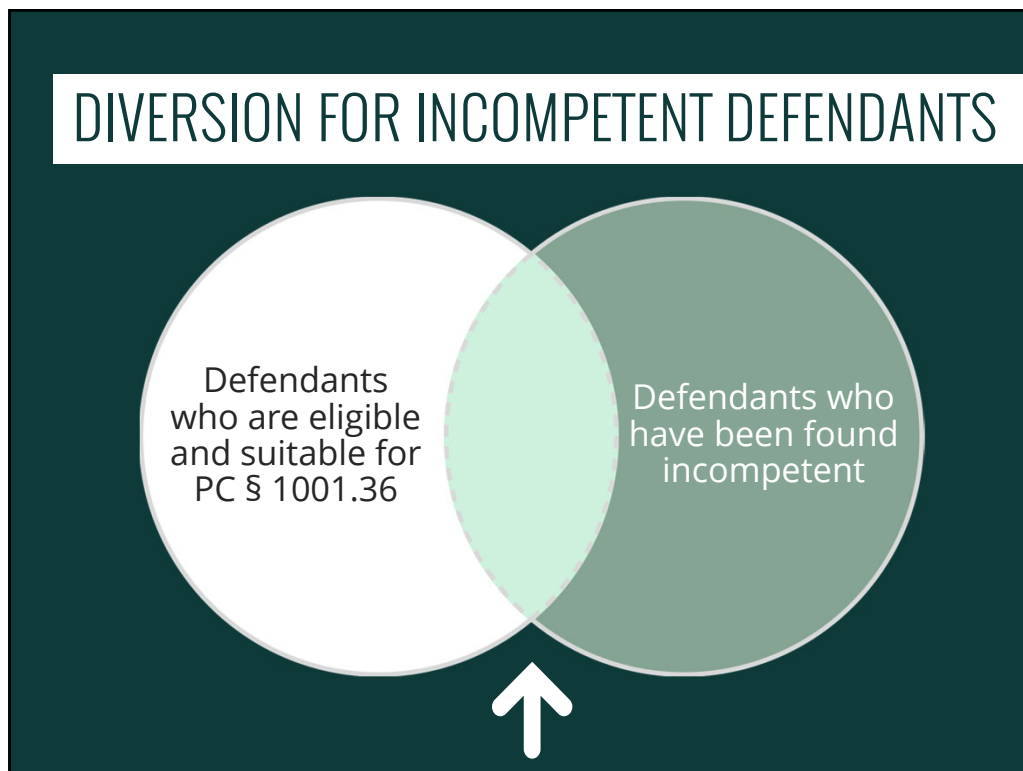
- Step up to more restrictive setting
- Drug treatment, NA/AA meetings
- More frequent review hearings
- Detain in jury box – NO!
- Jail – NO!

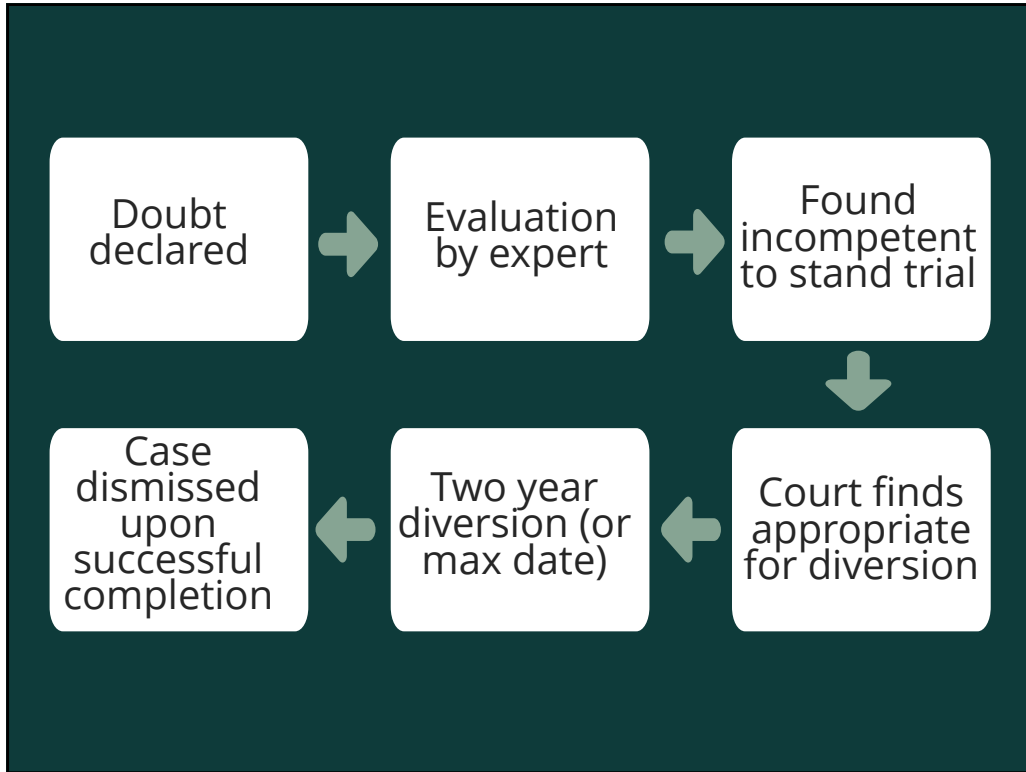
SANCTIONS



- Praise from judge or prosecutor
- Longer time between hearings
- Applause from audience
- Prizes
- Candy/fortune cookies

INCENTIVES











WHO PROVIDES TREATMENT TO PARTICIPANTS?

County providers



Community providers



Veterans affairs



Private insurance



WHAT KIND OF TREATMENT?

Inpatient psychiatric beds



Residential facilities



Outpatient



**Outpatient Services:**

- Partial hospitalization
- Full services partnerships
- Individual and group therapy
- Medication and med management
- Intensive outpatient
- Outpatient

## WHO SUPERVISES PEOPLE IN DIVERSION PROGRAMS?

- Court (and which judge)
- Pretrial services
- Probation
- Case manager



## WHAT IS HAPPENING IN THE JAIL?



Mental health screening

Referrals to services

Help enrolling in Medi-Cal

## IMPACT ON EXISTING COLLABORATIVE COURTS

Separate or  
integrated?

Changing current  
mental health court  
population?

How do you decide  
which track?

Using other  
collaborative courts?

## DATA COLLECTION



- Data required for DSH diversion
- Are you tracking data and what data are you tracking?
- How are you preventing demographic disparities in exercise of discretion?



# OPT-IN AGREEMENTS



# QUALIFIED MENTAL HEALTH EXPERT



# CAN YOU ADD CONDITIONS TO DIVERSION?

- No contact with victim?
- Stay away from specified locations?
- Restitution
- Home detention
- GPS/SCRAM monitoring
- Random drug testing



HIPAA! HIPAA! HIPAA!



QUESTIONS

