

SPECIAL DIRECTIVE 17- 08

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JACKIE LACEY 
District Attorney

SUBJECT: MENTAL HEALTH DIVERSION AND ALTERNATIVE
SENTENCING COURT PROGRAMS

DATE: APRIL 19, 2017

This Special Directive sets forth the Los Angeles County District Attorney's Office (Office) policy regarding consideration of mental illness in felony case settlement and participation in Alternative Sentencing Court (ASC) programs. It supersedes Legal Policies Manual (LPM) §§ 15.05 and 15.05.01, General Office Memorandum (GOM) 11-038, and the current practice for referring cases to the ASC programs to the extent that they are inconsistent with this policy, and it creates Chapter 28 of the Legal Policies Manual.

The purpose of this policy is to inform and empower deputies and their supervisors while making case filing and disposition decisions to consider the defendant's mental illness in addition to all other underlying circumstances of a crime, the defendant's criminal history, and victims' rights. In addition, this policy is intended to encourage program participation in diversion and ASC programs whenever it is in the interest of justice and protects victims' rights and public safety.

The revised policy no longer requires Bureau Director approval to refer a case involving serious or violent felony offenses or prior convictions to any ASC program. The revised policy also no longer requires Head Deputy approval to refer a candidate to any ASC program who is currently charged with a crime involving the sale, possession for sale, or transportation for purposes of sale of a controlled substance, unless required by the Office Felony Case Settlement policy as delineated in LPM Chapter 12.

Deputies may refer a candidate to any ASC program who is eligible and suitable under the parameters of the program. Deputies shall obtain prior Head Deputy or Deputy-in-Charge approval from the referring office when otherwise required by the Office Felony Case Settlement policy. If a candidate would otherwise be disqualified from participation due to the additional court-imposed parameters which exist for each ASC program, deputies may deviate from the general ASC program parameters upon the agreement of the court and justice partners, without additional Office supervisor approval.

LPM § 15.05.01 (Exceptions Protocol) is deleted. The title and text of LPM § 15.05 (Sentenced Offender Drug Court) is deleted and replaced as follows:

15.05 SENTENCED OFFENDER DRUG COURT

The Sentenced Offender Drug Court (SODC) provides an alternative drug treatment program for defendants who have pled guilty or admitted a violation of probation. To be eligible, defendants:

- Must not be charged with a serious or violent felony or probation violation or have a prior serious or violent felony conviction;
- Must have a history of drug abuse and addiction; and
- Must exhibit a sincere desire to get clean and sober.

Because this program assists participants who suffer from substance use disorders, it would be detrimental to recovery if drug dealers were also permitted to participate in the same program. Therefore, candidates who are currently charged with a crime involving the sale, possession for sale, or transportation for purposes of sale of a controlled substance should generally not be referred to SODC. However, if all parties agree, deputies may refer otherwise eligible candidates who are charged with low level sale, possession for sale, or transportation for sale charges, where there is clear evidence that the sales activity is driven by a documented history of addiction and motivated by the candidate's desire to afford or obtain drugs for his or her own consumption.

If accepted into the program, defendants are placed on probation for up to five years and receive 12 to 18 months of drug treatment. Defendants spend the first 90 days in custody where they participate in intensive addiction treatment followed by residential or sober living/outpatient treatment. The program is designed to gradually and incrementally move defendants into mainstream society and a regular probation caseload. Pursuant to Penal Code § 1203.4, the defendant can earn a dismissal after two and a half years on probation. If the charge is a wobbler, the defendant can also seek a reduction to a misdemeanor.

The title and text of Chapter 28 (**Mental Health Diversion and Alternative Sentencing Court Programs**) is added to the LPM as follows:

28.01 MENTAL HEALTH DIVERSION

In Los Angeles County, defendants with a diagnosed mental illness may be incarcerated in the county jail for significant periods of time as a result of the mental illness. Many also suffer from related problems, such as co-occurring substance use disorders and chronic homelessness. When positive interventions solve these underlying problems, this favorably impacts not only the criminal defendants themselves, but also their family members, prospective victims whose future harms can be prevented, and the community as a whole. When mental health treatment can safely take place in the community rather than the county jail, diversion serves the interest of justice and may reduce recidivism.

In the criminal justice system, the term “diversion” is often used either as a legal term of art to describe a statutory scheme which was enacted to prevent someone from suffering a criminal conviction, or to refer to a dedicated, specialized court at a particular location. The Office uses the term “diversion” much more broadly to include diverting a defendant from the justice

system, county jail or state prison into treatment and/or services in the community. Diversion can occur at any stage of the criminal justice process from the presentation and initial evaluation of charges through trial or plea, sentencing and subsequent revocation proceedings. Mental health diversion does not refer to any one particular program or specialty court. Deputies can and should take into account the existence of mental illness in their discretionary decision-making at all stages of the criminal justice process.

Currently, criminal defendants may be considered for a variety of diversion and Alternative Sentencing Court programs designed to reduce recidivism, by assisting defendants with their underlying problems which can contribute to criminal conduct. Additional programs are being piloted on an ongoing basis, both in specialty and criminal courts, interceding on behalf of defendants who are veterans or homeless persons, who suffered prior trauma, or who suffer from mental illness, substance use disorders or co-occurring disorders.

The Office policy outlined in this Chapter is intended to inform and empower deputies and their supervisors to make decisions which consider all underlying circumstances of a crime, including mental illness. In addition, this policy is intended to be interpreted consistent with existing office case settlement policy, to encompass programs operating in any criminal court countywide, and to include any future programs of a similar nature.

28.02 ALTERNATIVE SENTENCING COURT PROGRAMS

The following Alternative Sentencing Court (ASC) programs are currently employed in Los Angeles County:

- Sentenced Offender Drug Court (SODC) (See LPM § 15.05)
- Co-Occurring Disorders Court (CODC);
- Second Chance Women's Re-Entry Court (WRC);
- Veterans Court; and
- Community Collaborative Courts (CCC).

28.02.01 Office Policy for Alternative Sentencing Court (ASC) Programs

Through this unified policy, it is the specific intent of the Office to encourage program participation in all diversion and ASC programs when appropriate.

Deputies may refer a candidate who is eligible and suitable under the parameters of the program to any ASC program. Deputies shall obtain prior Head Deputy or Deputy-in-Charge approval by the referring office when otherwise required by the Office Felony Case Settlement policy as delineated in Legal Policies Manual Chapter 12. If a candidate would otherwise be disqualified from participation due to the additional court-imposed parameters which exist for each ASC program, deputies may deviate from the general ASC program parameters upon the agreement of the court and justice partners, without additional Office supervisor approval. (See LPM Chapter 12.)

28.02.02 Office Policy Factors for Consideration

ASC programs typically assist participants who suffer from substance use disorders, therefore it would be detrimental to recovery if drug dealers were also permitted to participate in the same programs. Candidates who are currently charged with a crime involving the sale, possession for sale, transportation for purposes of sale of a controlled substance should not be referred to an ASC program, unless the case involves low level sales, possession for sale, or transportation for the purposes of sale, and there is clear evidence that the candidate has a documented history of addiction and the sales activity was motivated by the candidate's desire to afford or obtain drugs for his or her own consumption.

In all cases, deputies should also consider the following factors:

- Defendant's background;
- Severity of the defendant's addiction;
- Existence and nature of the defendant's mental health issues and/or substance use disorder;
- Defendant's attitude toward treatment;
- Whether the defendant has attempted treatment in the past;
- Seriousness of the current offense(s) and/or prior offense(s);
- Remoteness of any prior strike offense(s);
- Use of a firearm or deadly weapon in the commission of the current or prior offense(s);
- Extent of any injury to any victim(s) in the current or prior offense(s);
- Violence or threat of violence in the commission of the current or prior offense(s); and
- Existence of any other aggravating or mitigating factors.

Candidates referred to a particular ASC program should also be considered for any other appropriate programs.

28.02.03 Alternative Sentencing Court Designee Program and Coordinator

To ensure the effective implementation of the ASC programs, the Office has appointed an ASC Coordinator who is assigned to the Bureau of Central Operations and staffs the Drug Court and ASC programs located at the Clara Shortridge Foltz Criminal Justice Center. The ASC Coordinator is an expert who serves as a countywide resource, not only for our deputies but also to other justice stakeholders and agencies outside of the office, attends and conducts training, and oversees the ASC Database.

The Head Deputy for each branch office in Line Operations shall designate a particular deputy as an ASC Designee. That person shall serve as an information resource for deputies within that location and as a contact person for deputies from other locations. The duties of the ASC Designees include:

- Staffing Drug Court and ASC programs at the particular branch or area office location;
- Attending relevant trainings, including presentations by the ASC Coordinator on the current criteria, procedures and resources for each of the programs;

- Serving as a resource to all deputies assigned to the branch or area office regarding eligibility criteria and procedural referrals for each of the programs;
- Entering data into the ASC Database necessary to ensure a proper accounting of these cases.

28.02.04 Alternative Sentencing Court Program General Practices

Each of these programs is based on the collaborative Drug Court model using a team approach to decision-making and requiring voluntary participation by a defendant in a court-supervised treatment program. Frequent interaction between the judicial officer and the participants is combined with rigorously monitored rehabilitation services and progress reports. The courts use graduated sanctions for minor program violations and rewards for successful progress in the program. Repeated or more serious violations can be subject to more serious sanctions up to, and including, termination from the ASC program.

Appropriate referrals to any diversion or ASC program can be made at any stage of the proceedings, but should be made at the earliest possible time. In order to transfer a case to the receiving court, all parties (deputy district attorney, defense attorney and judge) from both the home court and the receiving court must agree and an *Arbuckle* waiver must be taken. Charged serious or violent felony prior conviction allegations should not be dismissed by either the referring or receiving court in order to make a defendant eligible for ASC, absent the agreement of all of the justice partners.

Typically, participants will be supervised by the court for a specified period of time upon a grant of probation. Upon successful program completion, the bench officer may terminate probation early and/or dismiss the case, pursuant to Penal Code § 1210 for Proposition 36 cases, or pursuant to Penal Code § 1203.4 in all other cases. If the charge is a wobbler, the bench officer may reduce the charge to a misdemeanor pursuant to Penal Code § 17(b). However, the plea agreement can also specify additional terms and conditions, including continued probation supervision, which may differ from the ordinary dismissal and reduction process. If the participant is terminated from the ASC program, the defendant will be sentenced based on all relevant sentencing factors or according to any agreed upon disposition.

28.02.05 Alternative Sentencing Court Program Court Exclusions

As a matter of court policy, defendants will generally not be accepted into any ASC program if they:

- Have a current charged or prior conviction for a serious or violent felony;
- Are a registered sex offender;
- Are a registered arson offender;
- Are an active gang member;
- Have an excessively violent criminal record;

If a candidate would otherwise be disqualified from participation in any ASC program due to its individual court-imposed parameters, but appears to be a good candidate for the program,

deputies can deviate from these general parameters upon the agreement of the court and justice partners, without additional Office supervisor approval.

28.02.06 Co-Occurring Disorders Court (CODC)

The CODC is a post-conviction, court supervised treatment program designed to rehabilitate defendants who are experiencing co-occurring mental illness and substance use disorders and have a history of homelessness, are at risk of homelessness, or reside in County Service Areas 4 or 6 (downtown Los Angeles, Compton or West Hollywood).

The CODC program accepts men and women, ages 26 to 59 with co-occurring mental health and substance use disorders who have criminal cases involving:

- Proposition 36 eligible charges (PC § 1210);
- Low-level, non-violent pending felony charges or probation violations;
- Non-violent misdemeanors.

Pursuant to Proposition 36, the defendant cannot have a prior conviction for a serious or violent felony unless a five-year washout period has been met. (See LPM § 15.03.) The CODC program does not accept defendants who are currently on AB 109 Post-Release Community Supervision (PRCS), Mandatory Supervision or parole.

CODC participants must participate in 90 days of intensive residential mental health treatment followed by three to six months of mental health treatment in supervised sober living. Treatment services include integrated treatment for co-occurring disorders, psychiatry and medication management, individual and group therapy, random drug testing, emergency and transitional housing linkages, intensive case management, benefits establishment and recovery oriented peer groups.

28.02.07 Second Chance Women's Re-Entry Court (WRC)

The Second Chance Women's Re-Entry Court program is a post-conviction, court supervised treatment program designed to serve women who would benefit from substance use disorder treatment and services, in lieu of incarceration. The WRC program serves:

- Women charged with non-serious, non-violent felonies and who do not have a serious or violent prior felony conviction or
- Women who have a pending non-serious, non-violent felony probation violation and do not have a serious or violent prior felony conviction.

However, a current charged first degree residential burglary or prior conviction for first degree residential burglary that does not involve violence will not automatically disqualify an otherwise qualified candidate. An allegation that a victim was present during the commission of the residential burglary makes the charge a violent crime.

Program participants are placed on three to five years of probation supervision and are supervised by either a probation officer or parole officer assigned to the treatment provider and

currently receive six months of residential mental health and/or substance use disorder treatment services followed by outpatient treatment and aftercare services.

28.02.08 Veterans Court

The Veterans Court program is a post-conviction, court supervised treatment program designed to assist felony defendants who have served honorably in the United States military, who suffer from qualified disorders that are related to their military service, and who are eligible for Department of Veteran's Affairs (VA) benefits. (See PC § 1170.9 and GOM 11-05.) The five qualifying disorders are:

- Post-traumatic stress disorder;
- Traumatic brain injury;
- Substance use disorder;
- Sexual trauma; and
- Mental health issues.

The Veterans Court program serves:

- Veterans charged with non-serious, non-violent felonies and who do not have a serious or violent prior felony conviction or
- Veterans who have a pending non-serious, non-violent felony probation violation and do not have a serious or violent prior felony conviction.

Participants are placed on three to five years of non-reporting probation, are ordered to complete a residential or outpatient mental health and/or substance use disorder treatment program designed by the VA, and are supervised by VA representatives who report on the participants' progress to the court.

The felony Veterans Court program is entirely separate from misdemeanor military pretrial diversion. (See GOM 15-126.) Misdemeanor military diversion is available in any criminal court pursuant to operation of law. (See PC § 1001.80, subd. (k).)

28.02.09 Community Collaborative Courts (CCC)

The Community Collaborative Court program (CCC) is a post-conviction, multidisciplinary, resource intensive response to the most vulnerable populations involved in the criminal justice system. This includes veterans, persons who are homeless, persons suffering from mental illness, persons with substance use disorders, victims of human trafficking, and transitional aged and at-risk youth.

The CCC program is primarily designed for felony offenses and serves:

- Defendants charged with non-serious, non-violent felonies and who do not have a serious or violent prior felony conviction or
- Defendants who have a pending non-serious, non-violent felony probation violation and do not have a serious or violent prior felony conviction.

Currently, CCCs operate in the following courthouses: Clara Shortridge Foltz Criminal Justice Center, Compton, Long Beach and Van Nuys. Inter-district service throughout the county is provided through case transfer to these courts based upon a predetermined assignment matrix. In cases referred from outside of a CCC courthouse, the defendant shall enter a plea to an agreed-upon disposition before the case is transferred to the CCC. This plea shall include an *Arbuckle* waiver. The case shall then be referred to the CCC. If the defendant is accepted into the CCC, then the case shall be handled as described below. If the defendant is not accepted into the CCC, the case can be settled per the disposition agreement. Cases referred from within a CCC courthouse can be transferred at any time with the consent of all of the justice partners. CCCs also accept case referrals for other Alternative Sentencing Court programs if available in that courthouse.

Defendants will typically be placed on probation for a period of three to five years. Terms and conditions of probation include the treatment plan agreed upon by the collaborative team, which may include treatment in county jail, residential treatment, sober living with outpatient treatment and/or community aftercare.

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