

CHAPTER 28

MENTAL HEALTH DIVERSION AND ALTERNATIVE SENTENCING COURT PROGRAMS

28.01 MENTAL HEALTH DIVISION - INTRODUCTION

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. Accordingly, all filed cases, in which it is reasonably clear a defendant's mental illness significantly contributed to the commission of the alleged crime should be closely examined.

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, and to assist 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.

28.01.01 MENTAL HEALTH DIVERSION (PENAL CODE SECTION 1001.36)

Pursuant to Penal Code section 1001.36, diversion may be granted to any defendant who has a qualifying mental health disorder at any time after the filing of an accusatory pleading, unless the following crimes are alleged:

- 1.) Murder;
- 2.) Voluntary Manslaughter;
- 3.) An offense for which a defendant would have to register pursuant to Penal Code section 290 (unless the charged offense is Penal Code section 314);
- 4.) Rape;
- 5.) Lewd or lascivious act on a child under 14 years of age;
- 6.) Assault with intent to commit rape;
- 7.) Sodomy or oral copulation, in violation of Penal Code section 220;
- 8.) Commission of rape or sexual penetration in concert with another person in violation of Penal Code section 264.1;
- 9.) Continuous sexual abuse of a child, in violation of Penal Code section 288.5; or
- 10.) An offense involving a weapon of mass destruction in violation of subdivision (b) or (c) of Penal Code section 11418.

Diversion may only be granted if the following six factors are met:

- 1.) The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), excluding antisocial personality disorder, borderline personality disorder and pedophilia;
- 2.) The defendant's mental disorder played a significant role in the commission of the charged offense;
- 3.) The defendant's symptoms motivating the criminal behavior would respond to mental health treatment in the opinion of the mental health expert;
- 4.) The defendant consents to diversion and waives the right to a speedy trial;
- 5.) The defendant agrees to comply with the treatment as a condition of diversion; and
- 6.) The defendant will not pose an unreasonable danger to public safety if treated in the community.

If these requirements are met, then the court must determine whether the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant. Within two years of being granted pretrial mental health diversion, a defendant may get his or her case dismissed if he or she has successfully followed all rules and regulations established by the treatment provider.

For all pretrial mental health diversion motions made pursuant to Penal Code section 1001.36, the following protocol shall be followed:

- The Head Deputy of the unit, division, or courthouse in which the motion was made shall confer with the Head Deputy of the Mental Health Division (MHD);

- If both Head Deputies agree that there should be no opposition to the motion, then the motion shall be handled by the unit, division or courthouse in which the motion originated;
- If both Head Deputies agree that the motion should be opposed, or if the two Head Deputies disagree on how the motion should be handled, then the motion shall be handled by MHD deputies provided there are no staffing issues.

28.01.02 OFFICE OF DIVERSION AND REENTRY COURT

The Office of Diversion and Reentry (ODR) is a division within the Department of Health Services that was established by a Los Angeles County Board of Supervisors' motion in 2015. Their mission is to develop and implement a county-wide criminal justice diversion program for individuals living with a mental and/or substance use disorders and to provide reentry support services to vulnerable populations, because providing treatment specifically tailored to a specific need would improve the health of those in the criminal justice system and reduce recidivism. ODR actively evaluates inmates in the Los Angeles County Jails living with a mental illness to determine if they can be removed and placed in ODR housing.

In 2016, the Superior Court created the ODR Court that currently operates out of Department 44 in the Criminal Justice Center downtown. Defendants eligible for the ODR Court must be:

- Charged with a felony offense;
- In custody;
- Homeless;
- Suffer from a serious mental illness; and
- Enter into a negotiated plea.

Suitability is at the discretion of the court after hearing input from the prosecution and the defense. A defendant admitted into the ODR court will be placed on probation for a minimum of three years, will be physically transported from the county jail by ODR personnel, receive interim housing, with the possibility of obtaining permanent housing, and will be treated by mental health professionals daily in a structured setting; unauthorized absence from the residence, and failure to follow the directions of the treatment provider or take prescribed medication is a violation of probation. A defendant who successfully completes their probation can get their case reduced to a misdemeanor or dismissed.

- **ODR Hub Courts**

In March 2019, ODR established the ODR Hub Courts in an effort to service those individuals countywide, charged with a felony, who are living with a mental illness. Currently, the Hub Courts are operating out of Department 44 downtown, and in the Airport Courthouse; a Hub Court in Van Nuys is slated to begin sometime in early 2020. The downtown Hub Court, while continuing to take cases from within the courthouse, will take cases from Norwalk, Pomona and Pasadena; the Airport Hub Court will service all of the South Bay area courts, including cases from within the courthouse; the Van Nuys Courthouse will

service cases originating from within the courthouse as well as the San Fernando Courthouse. Antelope Valley will develop their own court that will specialize in dealing with those individuals living with a mental illness and charged with a criminal offense. The Hub Courts will operate the same way the downtown ODR court operated at its inception: the defendant must be homeless, charged with a felony, suffering from a severe mental illness, and enter a negotiated plea; the pleas must be taken in the sending court, not the Hub Court.

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 11-038.) 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.