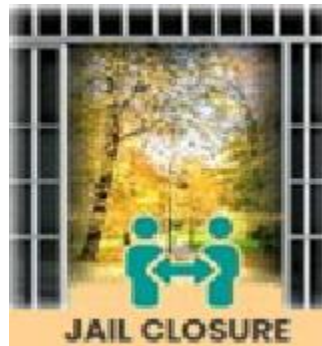


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## IS DIVERSION THE ANSWER?

*California authorized a new approach.  
Los Angeles ran with it. But, yes, there are limits.*



*For Police Issues by Julius (Jay) Wachtel.* If you've labored in the criminal justice workplace, closing a major city's principal jail (even if only "eventually") while "ensuring public health and safety" might seem a reach. But the goal of Los Angeles County's [Justice, Care, and Opportunities Department](#) (JCOD), which was formed last year, didn't arise from thin air. In January 2019 California enacted [Penal Code section 1001.36](#), which authorizes trial court judges to grant pretrial diversion for up to two years in all but the most serious crimes (murder, voluntary manslaughter and rape are among the disqualifying) to persons who are seriously mentally ill.

What's needed? The burden of proof falls on the defense. It must submit an expert opinion that the accused suffers from a mental disorder recognized by the [DSM](#), including "bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia." What's more, the malady must have been "a significant factor in the commission of the charged offense" and is amenable to treatment. Prosecutors are free to object, and jurists get a broad escape clause:

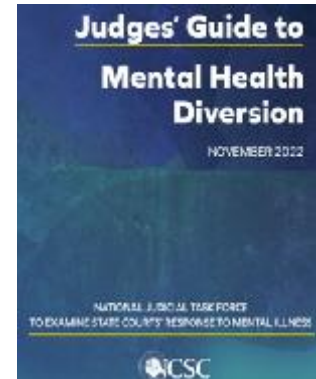
(b)(1)(F) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, *and may consider the defendant's*

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*violence and criminal history, the current charged offense, and any other factors that the court deems appropriate (emphases ours).*

Prospective patients must agree to a comprehensive plan, which can include treatment in a residential facility, and their progress must be regularly reported. If they succeed, charges are dismissed; if they fail or commit another crime, their prosecution is revived.

With progressively-minded District Attorney George Gascon in charge, mental health diversion seems a particularly good fit for Los Angeles. (Check out [the video](#) on the DA's website). But mental health diversion isn't just something that progressively-inclined California dreamt up. In 2019 a Federal entity, the [State Justice Institute](#), awarded more than a million dollars to the [National Center for State Courts](#) (NCSC) "to develop resources, best practices and recommend standards" for dealing with mentally ill persons who commit crimes ([grant SJI-19-P-019](#)). NCSC's final report, "[Judge's Guide to Mental Health Diversion](#)," came out in November. Throughout, its tone is unflinching and favorable:



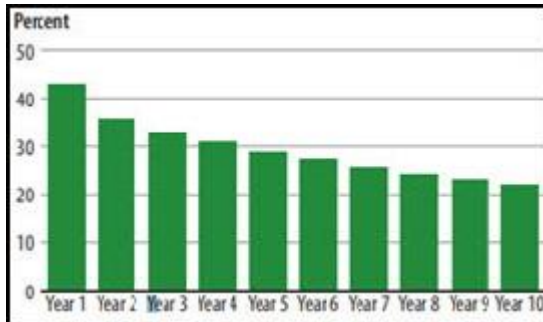
The incarceration of people with serious mental illness, often for minor crimes, is expensive and results in negative outcomes for the individuals, their families, and their communities. Even short stays in jail often make mental illness symptoms worse and increase the likelihood of recidivism. In response, courts and communities are increasingly looking to design and implement diversion strategies that identify those individuals who can and should be steered away from the criminal justice system, and toward appropriate treatment.

Indeed, the notion of diversion has taken hold in jurisdictions across the U.S. (For examples in Florida and Kansas, click [here](#) and [here](#).) But what do statistics show? Does diversion work? Does it reduce recidivism? Violent crime? Alas, L.A. County's [October 5, 2022 report](#) indicates that methods to statistically "evaluate which programs and interventions are operating as intended and which have a disparate impact" remain on the drawing board (p. 48). Bottom line: none of the gushing opinions are supported with numbers. And there's no relief in sight.

In fact, what figures there *are* suggest that the practice [faces immense challenges](#). On May 11, 2022 the Men's Central Jail held 12,977 inmates. Of these, seventy percent (9,150) had been charged with or convicted of a violent felony, and forty-six percent (6,025) awaited trial. Of the latter group, "most" were accused of a "serious or violent" felony. Based on these sobering facts, the county's jail closure team concluded that judges were unlikely to simply let folks go:

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While the Court is ultimately responsible for making release decisions, it is unlikely to release large numbers of individuals held on serious or violent felony charges — which includes the majority of people currently held in the County jail system — without significant investment and expansion of the infrastructure available to support a person if released (Attachment III, p. 2).

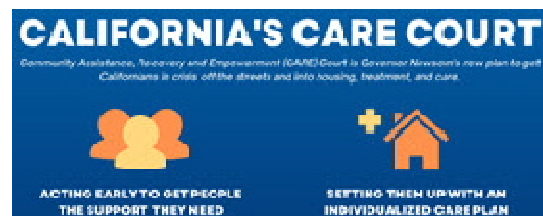


Problem is, as we recently reported in “[A Broken System](#)”, that “infrastructure” seems far from sturdy. A 2021 BJS report, “[Recidivism of Prisoners Released in 24 States in 2008](#)”, revealed that 81.9 percent of releasees were rearrested within ten years; 39.6 percent for a violent crime and 47.4 percent for a property crime (Table 11). Those charged with violent crimes were most likely to commit one again.

[L.A. County’s program](#), which launched in 2019, [has reportedly served 1,500 clients](#) during its four-year run. Three-hundred-fifty “graduated”, and seventy percent of those who remain are supposedly “on track”. Of the graduates, only five percent have again faced charges (so far). For drop-outs, recidivism stands at ten percent.

Nick Stewart-Oaten, the lawyer who authored the diversion law, feels that these are promising numbers. But how could it be otherwise? Given the rules on who can apply, judges’ stringent selection practices, and the considerable oversight that’s exercised over active clients, one should expect minimal recidivism. (That it’s somewhat higher for drop-outs makes perfect sense.) As things stand, mental health diversions are relatively few. In the real world, it could hardly be otherwise. A key issue that none of the content-rich websites and reports deems worthy to address – the views and feelings of the victims of violence – is undoubtedly a key obstacle. Imagine the political repercussions should a wealthy or politically-influential victim of violence discover that their assailant was “let go.”

And that brings us to our final point. Set aside the propaganda: unless diversions increase a hundred-fold, they can’t substantially reduce the number of “[Fearful, Angry, Fuzzy-Headed and Armed](#)” persons who enter the criminal justice system. For that, prevention is key. Giving mentally-disturbed, violence-inclined persons the equivalent of “rapid diversion” *before* they strike is the purpose of California’s spanking-new [CARE Courts](#). To be



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launched this October [in seven counties](#), it will focus on adults who suffer from schizophrenia and other psychoses. Referrals can come from a variety of sources, including families, first responders and social service agencies. Clients get public defenders, and judges can impose treatment plans that last up to two years. Medication can be refused, but failure to succeed can set off the existing, old-fashioned involuntary commitment process.

As one might expect, CARE's compelled nature has drawn considerable blowback from civil libertarians. After all, de-institutionalization has been the watchword for decades. Yet, as we suggested in "[Are We Helpless to Prevent Massacres?](#)", a land awash in AR-15's and such might benefit from a bit of coercion. Sure enough, "[Red Flag](#)" laws sometimes get the gun. But underlying mental health issues often remain unaddressed.

Will CARE fill that gap? Ask us in a couple of years. Meanwhile, keep your head down!