

The Mentally Ill and California Criminal Justice: The Issues and Challenges of Collaboration

Judge Richard J. Loftus, Jr.
Superior Court of Santa Clara County
November 15, 2013
Sacramento, CA

What We All Know

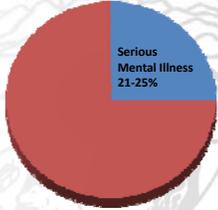
The CA Criminal Justice system is becoming increasingly responsible for large numbers of individuals with mental illness

Who has serious mental illness?

- 5.7% of the general population
- 18.5% of the CA arraigned defendants
- 23% of CA prison inmates

120,000 prison inmates in CA are released from custody each year.

Approximately 25,000-30,000 of these have serious mental illness.



Category	Percentage
Serious Mental Illness	21-25%
Other	75-79%

Serious Mental Illness

- Brain conditions with a genetic component
 - (Major Depression, Bipolar Disorder, Schizophrenia, Severe Anxiety Disorders, Severe ADHD)
- Developmental Disabilities
 - (Pervasive Developmental Disorder, Mental Retardation, Autism)
- Organic Brain Syndromes
 - (Severe Head Injury)

CA recidivism rate for inmates is usually 65-70% in 3 years.

Recidivism rate is **twice as high** for former inmates with serious mental illness.

Realignment
Reentry
Mandatory Supervision

Incompetent to stand trial has overwhelmed the state hospital system

Individuals with mental illness typically spend more time in custody than other with similar convictions



Then and Now

- In the 1950's, .67% of the American adults were held in either jails or mental institutions. 75% were in mental institutions.
- Today, 97% are in jail/prison.

Task Force for Criminal Justice Collaboration on Mental Health Issues

Members represented

- Dept. of Mental Health
- Mental Health Directors
- Sheriffs
- Probation Chiefs
- Dept. of Corrections
- National Alliance on Mental Illness
- Police Chiefs
- District Attorneys
- Public Defenders
- Disability Rights
- County Counsel

- ### Public Hearings
- Sacramento
 - Los Angeles



874 Comments
66 Commentators

- ### 137 Recommendations
- Community-based services
 - Enhanced case-processing practices
 - Policies and procedure at correctional facilities
 - Community supervision
 - Juvenile practices
 - Education

Recommendation #2

State and county departments of mental health and drug and alcohol should design and adopt integrated approaches to delivering services to people with co-occurring disorders that cross traditional boundaries between the two service delivery systems and their funding structures. Resources and training should be provided to support the adoption of evidence-based integrated co-occurring disorder treatment.

Recommendation #14

LIST OF SERVICE PROVIDERS

The presiding judge, or judge designated should obtain from county mental health departments a regularly updated list of local agencies that utilize accepted and effective practices to serve defendants with mental health illness or co-occurring disorders.

Recommendation #17

MENTAL ILLNESS INFO SHOULD GUIDE CASE PROCESSING

Information concerning a defendant's mental illness should guide case processing (including assignment to a mental health court or specialized calendar program) and disposition of criminal charges consistent with public safety and the defendant's constitutional rights.

Recommendation #22

Judicial officers should require the development of a discharge plan for defendants with mental health illness as part of disposition and sentencing. Discharge plans should be developed by custody mental health staff, pretrial services, or probation, depending on the status and location of the defendant, in collaboration with county departments of mental health and drug and alcohol or other designated service providers. Discharge plans must include arrangements for housing and ongoing treatment and support in the community for offenders with mental illness.

Recommendation #52

The CA DMH, CA CDCR, CA Sheriffs, CA Dept. Health Care Services—Medi-Cal should coordinate, to the greatest extent possible, drug formularies among, jail, prison, parole, state hospitals, and community mental health agencies and establish a common purchasing pool to ensure continuity of appropriate care for incarcerated individuals with mental illness. The coordination of formularies should not further restrict the availability of medications.

Recommendation #59

Probation and parole conditions should be the least restrictive necessary and should be tailored to probationers' or parolees' needs and capabilities, understanding that successful completion of a period of community supervision can be particularly difficult for offenders with mental illness.

Recommendation #60

USE OF INCENTIVES & SANCTIONS FOR PROBATIONERS WITH MENTAL ILLNESS

Specialized mental health probation officers and parole agents should utilize a range of graduated incentives and sanctions to compel and encourage compliance with conditions of release. Incentives and positive reinforcement can be effective in helping offenders with mental health illness stay in treatment and follow conditions of probation or parole.

Recommendation #62

SERVICES & RESOURCES FOR PROBATIONERS WITH MENTAL ILLNESS

Specialized mental health probation officers and parole agents should work closely with mental health treatment providers and case managers to ensure that probationers and parolees with mental health receive the services and resources specified in their discharge plans, and that release offenders are connected to a 24-hour crisis service.

Recommendation #63

RELATIONSHIP BETWEEN PROBATION/PAROLE & COMMUNITY SERVICE PROVIDERS

Working agreements and relationships should be developed between community-based service providers and probation and parole to increase understanding and coordination of supervision and treatment goals and to ensure continuity of care once supervision is terminated.

Recommendation #75

Offenders with mental illness who do not have federal and state benefits, or have lost them due to the length of their incarceration, should receive assistance from jail or prison staff or in-reach care managers in preparing and submitting the necessary forms and documentation to obtain benefits immediately upon reentry to the community.

Recommendation #76

DISCHARGE PLANNING FOR OFFENDERS WITH MENTAL ILLNESS

The discharge plan for release from jail, approved by the judicial officer as part of the disposition of criminal charges, should be implemented immediately upon release. The discharge plan should include arrangements for mental health treatment (including medication), drug and alcohol treatment, case management services, housing, applicable benefits, food, clothing, health care, and transportation.

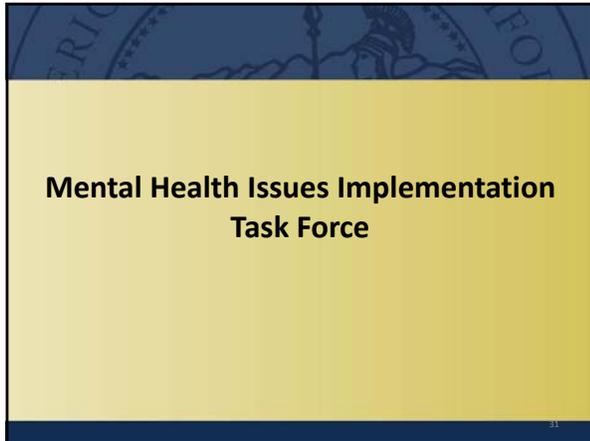
Recommendation #89

Every juvenile who has been referred to the probation department pursuant to Welfare and Institutions Code section 602 should be screened or assessed for mental health issues as appropriate.

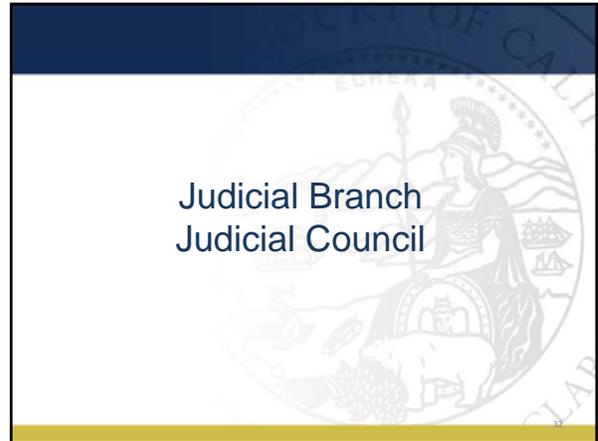
Recommendation #96

Existing legislation should be modified or new legislation should be created to refine definitions of competency to stand trial for juveniles in delinquency matters and outline legal procedures and processes.

Mental Health Issues Implementation Task Force

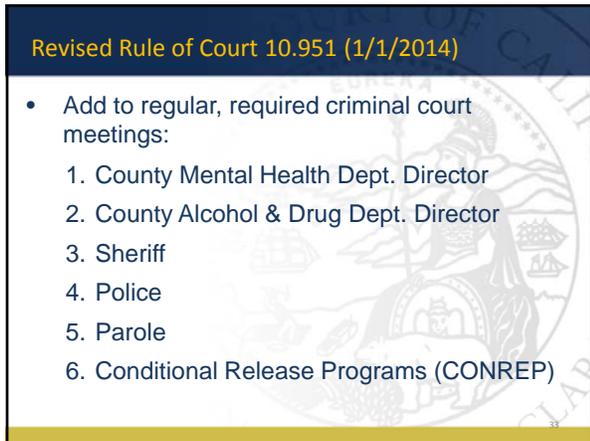


**Judicial Branch
Judicial Council**



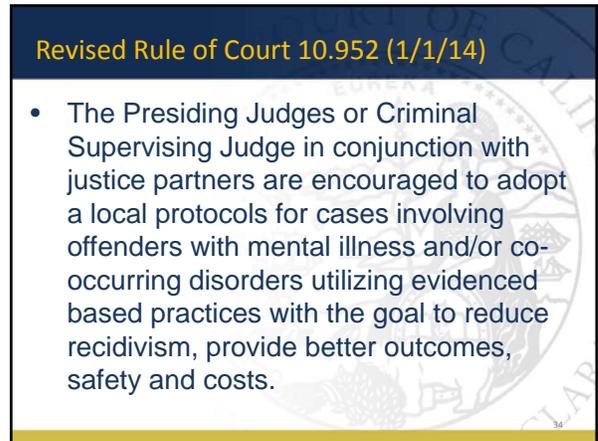
Revised Rule of Court 10.951 (1/1/2014)

- Add to regular, required criminal court meetings:
 1. County Mental Health Dept. Director
 2. County Alcohol & Drug Dept. Director
 3. Sheriff
 4. Police
 5. Parole
 6. Conditional Release Programs (CONREP)

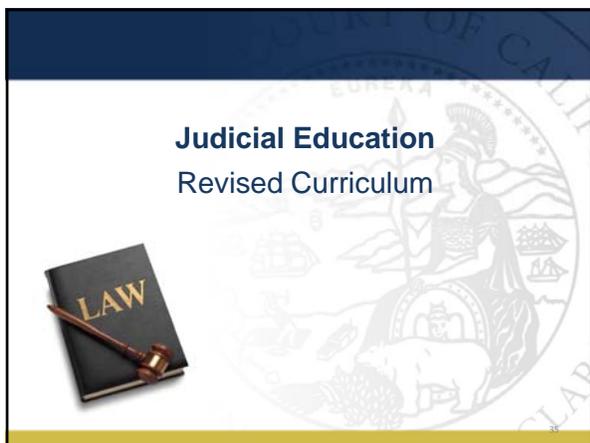


Revised Rule of Court 10.952 (1/1/14)

- The Presiding Judges or Criminal Supervising Judge in conjunction with justice partners are encouraged to adopt a local protocols for cases involving offenders with mental illness and/or co-occurring disorders utilizing evidenced based practices with the goal to reduce recidivism, provide better outcomes, safety and costs.



**Judicial Education
Revised Curriculum**



**Support
Legislative
Changes**



Amend W & I 5354

- Make available to the criminal judge, if the defendant desires, the conservatorship investigation report before sentencing in the criminal case

Amend Penal Code 1601

- Allow the court to conditionally release an IST defendant to an alternative placement to allow more appropriate treatment for restoration

Collaboration with Justice Partners



What is collaboration?

- Recognizing, understanding and cooperating
- Each county is different

Take Away

- An understanding
- A recognition
- A game plan

Why?

- \$
- Humane
- Effective
- Fair and just

What does a Mental Health court case look like?

Joe Smith is charged with a violation of Health and Safety Code §11377, possession of a controlled substance, methamphetamine; H&S 11550, under the influence, and Penal Code §148(a)(1), resisting or obstructing a peace officer. He is arraigned and his case is continued for two weeks to enter a plea. He previously failed DEJ.

On the plea date, his public defender advises the Court and the district attorney that Joe Smith has had two W&I 5150 holds in the last year but is currently not enrolled in a mental health treatment program.

Since Joe has been in custody for 14 days, the D.A. offers credit for time served on the PC 148(a)(1) so he can be eligible for Proposition 36 on the other two counts.

Joe pleads “nolo” to the two H&S counts and is sentenced to Prop. 36 probation. His probation conditions include an assessment by Mental Health with a requirement that he comply with their directions in addition to the standard conditions for Prop 36 with monthly reviews by the Court.

At those reviews over a one year period, the Court reviews his compliance with the probation orders that include treatment for both mental health and substance abuse.

What if:

- Homeless
- VET
- Pregnant
- SSI
- ACA

Mental Health Cases

- Revocation hearings
- Violations of probation
- Competency hearings
- Non-violent misdemeanors
- Domestic disputes
- IST misdemeanors

**TREATMENT
VS
INCARCERATION**

Perspective

**The Task Force for Criminal Justice
Collaboration on Mental health
Issues: Final Report**

is available at:

http://www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf