

STEPHANIE BROOKS HOLLIDAY, NICHOLAS M. PACE, NEIL GOWENSMITH, IRA PACKER, DANIEL MURRIE, ALICIA VIRANI, BING HAN, SARAH B. HUNTER

Estimating the Size of the Los Angeles County Jail Mental Health Population Appropriate for Release into Community Services

The largest mental health facilities in the United States are now county jails.¹ About 15 percent of men and 31 percent of women incarcerated in jails have a serious and persistent mental disorder.² Conservative estimates suggest that 900,000 persons with serious mental illness are admitted annually to U.S. jails, usually as pretrial detainees.³ Los Angeles County is no

exception to this trend. On average, in 2018, 30 percent of individuals incarcerated in the county jail system on any given day were in mental health housing units and/or prescribed psychotropic medications (5,111 of 17,024 individuals in the average daily inmate population for that year).⁴ This reflected a substantial increase since 2009, when just 14 percent of those in the county jail were in the jail mental health population. Moreover, between 2010 and 2015, there was a 350-percent increase in the number of incompetent-to-stand-trial cases referred to Department 95, Los Angeles County's mental health court program.⁵

KEY FINDINGS

- In June 2019, 5,544 individuals were in the Los Angeles County jail mental health population, which includes individuals in mental health housing units and/or taking psychotropic medications.
- Researchers developed a set of structured legal and clinical criteria to reflect the factors that contribute to the Office of Diversion and Reentry's (ODR's) decisionmaking when determining whether an individual may be put forward as a candidate for *diversion*—that is, redirection of eligible individuals with serious mental illness from traditional criminal justice processing into community-based services.
- Based on a consideration of these legal and clinical factors, an estimated 61 percent of the jail mental health population (about 3,368 individuals) were determined to be *appropriate* candidates for diversion; 7 percent *potentially appropriate* (414 individuals); and 32 percent (1,762 individuals) *not appropriate* candidates for diversion.
- In conducting our review, we were not bound to existing diversion programs in Los Angeles County (or the current capacity of existing programs). Because of this, these findings will help the county determine the full size of the population that would be appropriate for diversion and how it would need to scale community-based treatment programs to accommodate those individuals.

Abbreviations

BOS	Los Angeles County Board of Supervisors
CBR	community-based restoration
CSG	Council of State Governments
DHS	Los Angeles County Department of Health Services
DMH	Los Angeles County Department of Mental Health
DSH	California Department of State Hospitals
FIST	felony incompetent to stand trial
LASD	Los Angeles County Sheriff Department
MIST	misdemeanor incompetent to stand trial
ODR	Office of Diversion and Reentry
SMI	serious mental illness

This increase in the mental health population in county jails is coupled with an increasing emphasis on establishing programs designed to redirect eligible individuals with mental health disorders from traditional criminal justice processing and provide them with community-based clinical services. Such redirection is often characterized as *diversion*. Diversion programs have many potential advantages: They connect individuals with needed treatment services, reduce the burden on correctional systems to provide these services, and may save costs without compromising public safety.⁶ Moreover, providing treatment in the least-restrictive environment is a core principle of patient-centered care. The movement toward diversion is taking place on a national level. For example, in 2015, the Stepping Up Initiative was launched by the National Association of Counties, the American Psychiatric

Association Foundation, and the Council of State Governments (CSG) Justice Center with the explicit goal of connecting counties with “the tools they need to develop cross-systems, data-driven strategies that can lead to measurable reductions in the number of people with mental illnesses and co-occurring disorders in jails.”⁷

Recognizing the local need in Los Angeles County for alternative approaches for dealing with mental health challenges in the criminal justice system, the ODR was established within the Los Angeles County Department of Health Services (DHS) in 2015. At the same time, DHS became primarily responsible for provision of care in the county jail.⁸ Although several small diversion options were available in Los Angeles County at the time (e.g., specialty courts), most individuals with mental health concerns in county jails received jail-based services.⁹ In contrast, ODR aims to support individuals with serious mental illness (SMI) who are involved in the criminal justice system by allowing them to access community-based services.¹⁰

ODR currently supports several courtroom interventions along the continuum described in the Sequential Intercept Model,¹¹ which result in release into community services (referred to as *diversion* for the purposes of this report, but it should be noted that this term is distinct from “the California Department of State Hospitals [DSH] Diversion,” which is a specific program offered by ODR). Current ODR programs that remove individuals with SMI from custody are described in Box 1.¹² As of November 2019, ODR had removed 4,305 individuals from custody and placed them in community-based

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Box 1. Current ODR Diversion Programs

- **Supportive housing program for individuals experiencing homelessness (i.e., ODR Housing program):** Initiated in August 2016, this program is designed to serve individuals with a felony charge who are experiencing SMI and homelessness. Those who enroll in the program plead guilty or no contest and are sentenced to ODR Housing with a term of probation of three to five years. A key condition of probation is to comply with the terms of ODR Housing. Individuals who enroll are then eligible to remain in ODR Housing after probation termination, as it reverts to permanent supportive housing with continued case management services for life.
- **Misdemeanor Incompetent to Stand Trial–Community-Based Restoration program (MIST-CBR):** Started in October 2015, this program serves individuals who are charged with misdemeanors and found incompetent to stand trial. For these individuals, ODR submits a conditional release request, and diversion to community-based treatment settings takes place under the supervision of mental health judges.
- **Felony Incompetent to Stand Trial–Community-Based Restoration program (FIST-CBR):** Started in July 2018, this program is a collaboration with DSH. DSH provides funding to support community-based restoration for individuals who would otherwise be waiting for state hospital slots. Individuals are committed to housing in the community and receive community-based restoration. Additionally, ODR identifies individuals in jail who have become competent while waiting for DSH placement and typically recommends entry into another ODR program (e.g., ODR Housing) or a jail-based program (a pathway referred to as the “Off-Ramp”).
- **DSH Diversion program (under California Penal Code § 1001.36):** This new program (also known as “DSH Diversion”), effective January 1, 2019, was established by California Penal Code §§ 1001.35–1001.36 (“Diversion of Individuals with Mental Disorders”). The new laws allow for diversion of individuals charged with felonies or misdemeanors *if* a qualified mental health expert can identify a nexus between the offense and a mental health concern. ODR receives funding from DSH to provide services to those who meet the statutory criteria and who have the potential to be deemed incompetent to stand trial. DSH narrowed the eligibility criteria to serve those diagnosed with schizophrenia, schizoaffective disorder, and bipolar I disorder and charged with a felony offense.

services through its programs.¹³ This included 2,316 through ODR Housing, 1,577 through MIST-CBR, 230 through FIST-CBR/Off-Ramp, and 64 through DSH Diversion.

Current Policy Landscape in Los Angeles

In the last two years, the Los Angeles County Board of Supervisors (BOS) has made significant efforts to encourage the study of alternatives to incarceration, with a particular focus on the population with mental illness. In August 2018, the BOS directed a study of the existing jail mental health population to determine who may be eligible for diversion programs (which resulted in this report) and required the development of a “diversion road map” that would explore how the county could increase the availability of community-based

treatment options.¹⁴ This includes a focus on the types of programs, staffing, and funding that would be needed to support additional diversion efforts. Furthermore, the BOS acknowledged the lack of both state and local mental health beds in California and directed the Los Angeles County Department of Mental Health (DMH) to “assess current and future need for Mental Health Hospital beds that support the jail population.”¹⁵ In February 2019, the BOS then established the Alternatives to Incarceration Workgroup, which was tasked with bringing stakeholders together to build a “more effective justice system.”¹⁶ In their interim report, the workgroup encouraged the expansion of a system of care that is accessible to individuals experiencing mental illness before they end up involved in the criminal legal system.

In addition to studying the needs of those with mental illnesses and the best practices needed to

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support them, the county also has taken steps to fund and expand available services. The BOS authorized ODR to expand its current ODR Housing program to eligible individuals in the entire county by the end of 2019; previously, its services were only available to cases heard at the downtown central courthouse.¹⁷ Moreover, the passage of Assembly Bill No. 1810, which allows for pretrial diversion of individuals charged with certain crimes who are experiencing mental health issues, expanded ODR's capacity to address the needs of this population as well as the capacity of the courts and public defender's offices to divert individuals more quickly into community-based alternatives.¹⁸ Furthermore, as a new measure, the county is investing in a campus-based project designed as an alternative to arresting and incarcerating individuals experiencing mental health issues and homelessness,¹⁹ which highlights additional efforts to augment existing systems of care.

Another key shift happened in August 2019. The Men's Central Jail, located in downtown Los Angeles, was slated to be replaced with the Consolidated Correctional Treatment Facility, often described as a "mental health jail" that would provide treatment to more than 3,800 incarcerated individuals with mental health concerns in a secure setting. In February 2019, the BOS modified this plan to build at least one mental health facility, which would be run by health providers. On August 5, 2019, DHS, DMH, and the Department of Public Health delivered a report to the County Chief Executive Office outlining the need for services to be developed along a continuum of care, with significant options for unlocked community-based facilities for individuals with mental health issues.²⁰ On August 13, 2019, the BOS voted to cancel the contract to

replace the Men's Central Jail,²¹ citing the importance of understanding what percentage of individuals in the jail could be safely diverted to community-based treatment as critical to determining what type (and size) of treatment center would be needed.²² Together, these recent policy actions highlight the need to understand the current size of the population appropriate for diversion.

About This Research

To ensure that an appropriately sized system of care exists in Los Angeles County, it is critical to know the size of the potentially divertible population. The RAND Corporation was contracted by ODR, in collaboration with Groundswell Services, Inc.; the University of California, Los Angeles, School of Law Criminal Justice Program; and the University of California, Irvine, to estimate the size of the current population of individuals incarcerated in county jails who would likely be legally suitable (i.e., appropriate for diversion from a legal perspective) and clinically eligible (i.e., appropriate for diversion from a clinical perspective) for community-based treatment programs. ODR as an agency is responsible for identifying individuals to put forward as a candidate for diversion. Our goal was to understand the factors that contribute to ODR's decisionmaking when determining whether they will put someone forward as a candidate and then to apply the factors to a representative sample from the jail mental health population. In conducting this research, we were not bound to existing diversion programs (or current capacity within existing programs) in Los Angeles County; rather, we were interested in determining what percentage of individuals incarcerated at the

county jail could be diverted assuming that there were no limits on the types of programs or number of treatment slots available in the community. The research was designed to help determine how the county would need to scale community-based treatment programs to accommodate the full divertible population.

Methods

There were two phases to our methods: First, we developed a set of structured clinical and legal review criteria to ensure the reliability and replicability of our decisions regarding appropriateness for diversion. Second, we applied these criteria to a stratified random sample of individuals from the jail mental health population to identify an estimate of divertible individuals.

Phase 1: Developing Legal and Clinical Criteria

We began by developing criteria used to determine legal suitability and clinical eligibility for diversion. We started this phase by holding discussions with ODR clinicians to better understand ODR programs and processes, including the factors they consider when determining if they will put someone forward as a candidate for diversion. We also held discussions with a number of other important stakeholders—including district attorneys, public defenders and alternate public defenders, LASD representatives, and program clinicians—to better understand the context in which the ODR programs operate. Because diversion is a decision that ultimately involves multiple stakeholders—including defense attorneys, prosecutors, and judges—ODR staff work closely with these individuals to determine who may be appropriate candidates for diversion. In practice, ODR staff apply this knowledge when conducting their initial screening of an individual’s suitability. Based on our discussions, and dependent on the particular program, it appears that ODR considers whether the case has at least some potential for a successful review when the question of legal suitability is reviewed by a judge. This should be kept

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in mind in the context of our criteria development work.

Our goal was to develop criteria that reflect ODR’s decisionmaking for identifying potential candidates for diversion. These were then formally tested against a sample of cases that ODR reviewed as part of a preliminary study,²³ which enabled us to examine the reliability of our criteria before they were applied to a larger sample in the second phase of our study (see Appendix A for a discussion of our reliability testing). Our legal criteria were developed to identify current and past charges that might render someone not appropriate for diversion, based on ODR’s experience in its interactions with criminal justice stakeholders (for legal review criteria, see Appendix B). Our clinical criteria were developed to identify individuals with SMI, which are the target population for ODR services.²⁴ This was based on diagnosis but also other specific indicators that might capture someone with SMI who did not have a diagnosis in the jail medical records. These indicators included descriptions in the records of observable behaviors that demonstrated SMI as well as prescriptions for antipsychotic medications (for clinical review criteria, see Appendix C). Together, the legal and clinical assessment would allow us to classify individuals as *appropriate* (i.e., no obvious bars to diversion are apparent), *potentially appropriate* (e.g., some factors may be viewed with disfavor by a judge or district attorney, but no complete bar was identified), or *not appropriate* for diversion.

Phase 2: Review of Sampled Cases

After establishing the legal and clinical criteria, we conducted a chart review of a stratified random sample of individuals from the jail mental health population to identify an estimate of the number of individuals that are potentially divertible. LASD provided a data set that included all individuals in its jail mental health population on June 6, 2019. This was made up of individuals in LASD custody facilities who were in mental health housing units (including moderate observation housing, high observation housing, or the forensic inpatient unit), taking psychotropic medications, or both. The data sets included all individuals incarcerated at the jail regardless of custody status (pre- versus posttrial) because our focus was determining whether individuals would be suitable given their clinical characteristics and current and previous criminal charges rather than their current stage of processing.²⁵ The jail mental health population at the time the data were pulled was 5,544 people. Based on an initial power analysis, we selected a sample of 500 individuals (details regarding the sampling strategy are provided below).

To conduct the chart review, we began with examining an individual's legal status. At our request, ODR provided select legal-related information for each individual in the sample, including the statutory citation (e.g., California Penal Code § 594[a]) and level (e.g., misdemeanor) for each charge pending against the individual as well as the citation and charge level for each felony conviction within the previous five years. Based on our discussions with ODR, we flagged common California criminal statute citations as to whether they involved alleged or adjudged actions that were likely to result in the individual being viewed as not appropriate or only potentially appropriate for diversion, which were generally based on charge severity. A pending charge of California Penal Code § 261(a)(2) (rape by force or fear of bodily injury) or California Penal Code § 664/187(a) (attempted murder), for example, would characterize the individual as not appropriate for diversion based on our prior research. All cases that were determined

to be appropriate or potentially appropriate then underwent the clinical review.

The clinical review was then conducted by a subset of clinicians on the project team. Clinical reviewers did not have access to the individual's legal information when conducting their assessments. Initially, three cases each were reviewed by pairs of clinicians to ensure interrater reliability.²⁶ Then, each individual in the sample was reviewed by one of two team members and was designated as either appropriate or not appropriate for diversion based on the clinical criteria. We randomly selected 20 charts to be independently reviewed by two team members and then assessed interrater reliability by determining whether both team members came to the same determination independently. As the clinicians coded the charts, they flagged any charts that were especially challenging or inconclusive. All flagged charts were reviewed by another clinician to make a final determination.²⁷

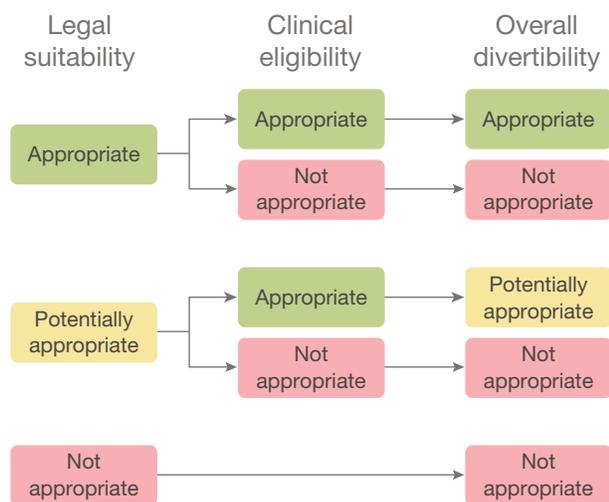
After completion of the clinical review, the legal and clinical decisions were synthesized using the rules articulated in the flow chart depicted in Figure 1.

Sampling Strategy and Statistical Analysis

We applied the self-weighting stratified sampling method to draw a representative study sample from the jail mental health population (i.e., the sampling frame for this study). Self-weighted stratified sampling aims to produce a representative study sample by using demographic information to create strata (i.e., subgroups of the study population) and minimizing the design effect of survey sampling. The sampling frame contained 5,544 individuals with their sex, age, and race/ethnicity information. Given our target sample size, our sampling rate was roughly 9 percent.²⁸

We performed standard statistical analysis for contingency tables adjusting for survey designs including sampling strata, survey weights, and finite population corrections.²⁹ The survey weights did not introduce a notable impact to the final estimates because of the self-weighting design. The stratification design and finite population correction

FIGURE 1
Path to Legal and Clinical Decisions to Determine Diversion Appropriateness



mostly reduced the standard errors in all analysis slightly. All analyses were performed by the survey package in Stata 14.2.

Results

In Table 1, we describe the demographic characteristics of the jail mental health population at the time our data were drawn. The majority of individuals were men; regarding race/ethnicity, the largest percentage of individuals were non-Latino black (about 41 percent), followed by Latino (about 35 percent).

Based on our analyses, we found that about 60.8 percent of the jail mental health population were appropriate for diversion (about 3,368 individuals, based on the current population); 7.5 percent were potentially appropriate (about 414 individuals); and 31.8 percent were not appropriate (about 1,762) (see Table 2).

Table 3 reports the decisions regarding appropriateness for diversion by gender. A larger percentage of women were determined to be appropriate candidates for diversion than men.

Additional analyses by race/ethnicity are reported in Appendix D.

TABLE 1
Demographic Characteristics of the Jail Mental Health Population

Demographic Characteristics	Percentage (n)
Sex	
Male	85.10% (4,718)
Female	14.90% (826)
Age (years old)	
< 28	22.75% (1,261)
28–34 years old	26.15% (1,450)
35–44 years old	25.20% (1,397)
45+ years old	25.90% (1,436)
Race/ethnicity	
Non-Latino white	19.25% (1,067)
Non-Latino black	40.69% (2,256)
Latino	35.35% (1,960)
Other	4.71% (261)

TABLE 2
Appropriateness for Diversion of the Jail Mental Health Population

Final Decision	Percentage	95% Confidence Interval	Standard Error	Design Effect
Appropriate	60.75%	56.63–64.73%	2.06%	0.981
Potentially appropriate	7.47%	5.55–9.99%	1.12%	0.994
Not appropriate	31.78%	28.07–35.74%	1.95%	0.966

NOTE: Design effect refers to the ratio in the variance of an estimate between the current sample and a simple random sample without any survey design.

Discussion

This study provided an estimate of the percentage of individuals in the jail mental health population who may be appropriate for community-based diversion. Applying our criteria, which were designed to reflect the factors that ODR generally considers when deciding whether to put someone forward as a potential candidate for diversion, we found that an estimated 60.8 percent of the jail mental health population would be appropriate candidates for diversion, and 7.5 percent would be potentially

TABLE 3
Appropriateness for Diversion, by Gender

Final Decision	Percentage	95% Confidence Interval	Standard Error	Design Effect
Men				
Appropriate	58.51%	53.97–62.91%	2.28%	0.993
Potentially appropriate	8.31%	6.12–11.18%	1.28%	0.991
Not appropriate	33.18%	29.09–37.55%	2.15%	0.970
Women				
Appropriate	73.55%	63.13–81.88%	4.73%	0.962
Potentially appropriate	2.69%	0.69–9.93%	1.81%	1.053
Not appropriate	23.76%	15.9–33.93%	4.53%	0.950

NOTE: Design effect refers to the ratio in the variance of an estimate between the current sample and a simple random sample without any survey design.

appropriate candidates for diversion. This is similar to estimates found by ODR during its preliminary study, which was conducted with a simple random sample drawn about four months earlier than our sample. Specifically, ODR found that an estimated 56 percent (95 percent CI [confidence interval]: 52–62 percent) of individuals were appropriate for diversion, and 7 percent (95 percent CI: 5–9 percent) were potentially appropriate for diversion (Ochoa et al., 2019) (for more on this study, see Appendix A). Additionally, we found that more women than men were determined to be appropriate for diversion. Understanding the size and characteristics of the population appropriate for release to community-based treatment is important for the county, as one of the main constraints to serving this population is the existing capacity to serve these individuals. Specifically, knowing how many individuals could be appropriate for diversion is the first step toward understanding the types of programs, staff, and funding that would be needed to treat those individuals in the community, as well as the impact on the overall jail mental health population.

It is important to note that we did not consider specific ODR programs when determining whether an individual was appropriate for diversion. Rather,

our approach reflected an “ideal world” scenario in which there was a sufficient number of community-based treatment slots to serve the divertible individuals, regardless of the precise details of any particular program. To build on these results, there are several next steps that would be informative. First, it would be helpful to determine how many of those considered divertible would be eligible for each of the existing diversion programs. That would provide a more nuanced basis for determining the need for expansion of capacity in each of those existing programs. Second, it would be useful to determine the level of care needed by each individual, given their current clinical condition (e.g., acuity of symptoms, level of psychosocial functioning). Our clinical criteria included a mix of historical or static factors (e.g., history of conservatorship) as well as current clinical factors (e.g., presence of observed behaviors consistent with SMI). This means that individuals identified as clinically eligible for diversion could have a variety of current treatment needs. This type of follow-up analysis could provide data regarding the kinds of additional programming that may be needed (e.g., additional community inpatient psychiatric beds), which would allow Los Angeles County to determine what the current community-based capacity is for those levels of care and identify what gaps exist.

In addition, in our review, we did not consider whether individuals were pre-sentence or post-sentence. This is because we operated under the assumption that if an individual was serving a sentence at the time the sample was drawn but had been identified sooner as appropriate for diversion, he or she could have been diverted at some point during pretrial proceedings or at the time the court’s judgment was rendered. That said, it is also worthwhile to consider effective community-based treatment options that can be provided along the entire continuum of the Sequential Intercept Model. Although ODR has created interventions across intercepts, most are at intercept 3 (jails/courts). However, early diversion efforts can drastically reduce the demand for competency-related services. Most competency-to-stand-trial evaluations are now conducted pursuant to misdemeanor charges.³⁰ Many of these evaluations could likely be avoided

with the presence of strong, robust diversion and preventive programs. Fortunately, even without an expanded scope, ODR seems to be consistent with (if not advancing) nationwide trends in this regard; however, other examples could be illustrative for the county to consider. Miami-Dade County uses detention, diversion, and holding facilities that prioritize mental health and psychosocial needs over competency services.³¹ Bexar County in Texas provides police officers with a dedicated short-term treatment facility for individuals with mental illness who have minor charges; outcomes are promising in that numbers of diversions have increased annually.³² Maricopa County in Arizona fields a similar program with comparable results, offering law enforcement workers a drop-in crisis center for individuals they encounter that prioritizes mental health care over minor criminal prosecution.³³ Eugene, Oregon, intervenes at the point of arrest, often sending a CAHOOTS (Crisis Assistance Helping Out on the Streets team), which includes a medic and a crisis worker to respond in cases of urgent mental health crises.³⁴ These services are critical in decreasing the criminalization of persons with mental illness.

Even with increased diversion, however, there will continue to be a large number of individuals with mental health needs who remain in jail—whether because of limited community-based capacity, concerns about legal suitability for diversion, or issues related to public safety. Some of these individuals may be waiting placement in a state hospital (e.g., for restoration to competence to stand trial), and some of these individuals will be serving sentences. In addition, the process of obtaining a

judicial determination of whether diversion is an appropriate pathway for an individual—and for finding a suitable facility to accept that person—is neither automatic nor swift. Thus, LASD and DHS will continue to have a major role in housing and supervising individuals with mental illness in the jail system. This is important for two reasons. First, it will be critical to ensure that the mental health needs of individuals who remain incarcerated are met in a timely and effective manner. Second, this creates groups of individuals who will require services following discharge. Although ODR is currently focusing on providing clinical-legal interventions through the court system, there are other efforts underway that provide discharge planning and reentry services. For example, Los Angeles County has piloted certain programs such as the Mentally Ill Offender Crime Reduction grant, although there were challenges to retaining individuals in this program.³⁵ These reentry efforts have been continued through the Whole Person Care initiative, in which evaluation efforts are currently underway.³⁶ The county might also consider ways to integrate other evidence-based reentry programs or approaches into reentry services, such as forensic assertive community treatment or intensive case management models given the continued need for discharge and reentry service planning.³⁷

Finally, with expansion comes constraints on the courtrooms hearing these cases. In our discussions with legal stakeholders, the issue of overload in cases was raised. Because all cases should receive individualized consideration, the number of cases in any given “mental health” courtroom should be

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of concern. For example, based on our stakeholder discussions, Department 44 in the Clara Shortridge Foltz Criminal Justice Center of Los Angeles—where cases for ODR Housing are heard—has 400–500 cases on calendar every month. This is not to say that there are 400–500 new cases each month, as the vast majority of these are progress reports that come back to court repeatedly; however, this number is quite large. Expanding the number of individuals being diverted may also require an increase in the number of days per month that diversion cases are heard by the court. If ODR begins working with all clients who are appropriate for diversion, it is clear that an expansion of the number of courtrooms within each courthouse will be required.

Limitations

There are certain limitations to this study that should be considered when interpreting the findings. First, although we were able to use ODR’s preliminary study to assess the consistency of our review criteria with ODR’s decisionmaking process, we were unable to validate our criteria against true “successful” diversion—that is, whether an individual who was recommended for diversion was actually diverted. In addition, although we conducted informational interviews with several key legal stakeholders in the early stages of this project, we had limited success obtaining input from judges, who are the ultimate legal decisionmakers, given the individualized nature of their decisions and lack of systematic data regarding rates with which diversion is granted. Therefore, our understanding of the legal factors that shape diversion come from our discussion with ODR and its experience. That said, as described above, ODR validated its decisions regarding appropriateness for diversion for a small

number of cases in its preliminary review with legal stakeholders, and we used ODR’s review as the foundation for our own criteria.

Second, ODR staff are routinely present in the courtrooms of the small number of judges within the Los Angeles Superior Court system who currently consider ODR diversion cases, and our sense is that they are intimately familiar with the dynamics of how prosecutors, defense counsel, and judges in those courts interact at such hearings and how these stakeholders perceive the benefits and drawbacks of diverting individuals. But significant expansion of diversion resources and the associated use of such programs will similarly expand the venues across the county in which cases will be heard far beyond the small number of courtrooms that are currently in play. Legal stakeholders in other courts may have differing views regarding the factors that shape legal suitability and clinical eligibility. If it is assumed that the judges assigned to courtrooms currently handling mental health matters represent a group who are relatively receptive to diversion, then our estimates should be considered as an upper bound of the population that would ultimately be diverted even if treatment resources were available without limitation.

Third, judges do not have unlimited discretion when deciding whether release into community services is an appropriate pathway for the people facing criminal charges in their courtroom. For example, admission to ODR Housing requires that an individual plead guilty or no contest in exchange for probation in which adherence to the rules of that program is a condition of the sentence. California law sets forth a number of situations in which individuals facing criminal charges are statutorily deemed to be ineligible for probation (e.g., California Penal Codes §1203, §667, §667.61), which would

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presumably apply as well to any diversion program using the ODR Housing admission model. In addition, DSH Diversion includes certain statutory restrictions related to both legal and clinical status (e.g., the program is available to individuals with schizophrenia, schizoaffective disorder, and bipolar I disorder). These factors may affect the specific programs for which a given individual would be eligible.

Fourth, any clinical review of mental health among individuals being held in county jails must grapple with the implications of substance abuse. Individuals with a diagnosis of a substance use disorder alone are not eligible for diversion through ODR's programs. Most individuals in our sample had some substance abuse history, and many even demonstrated the effects of substance intoxication upon admission. Although our review tried to identify only symptoms resulting from SMI, there may be instances in which the jail clinicians (whose notes we reviewed) mistook the effects of substances for symptoms of psychiatric illness. Conversely, there may be instances in which they failed to recognize genuine symptoms that were overshadowed by (or mistakenly attributed to) the effects of substances, especially for individuals who were admitted to jail shortly before our review took place. Because most individuals in our sample remained in jail far longer than most effects of substances persist, we believe this dilemma was mitigated by reviewing clinical information over as much as a yearlong period, although this span varied depending on when individuals were first jailed (and when released, if relevant) during our review period. But we acknowledge that any review of this sort—just like any clinical diagnosis in jail—cannot infallibly distinguish all symptoms of mental illness from all effects of substances.

Fifth, it is important to note that our review focused on the jail mental health population at a single point in time. Individuals with SMI often cycle through the justice system, so it is possible that diverting these individuals could prevent those future cycles through the system and help alleviate the overall jail mental health population in a meaningful way. However, we cannot formally extrapolate what effect diverting 60.8 percent of the

jail mental health population at a point in time would have on the jail mental health population in a given year. As a next step, it would be valuable to refine our estimates using additional contextual information, such as the average length of stay of individuals in the jail mental health population, their level of care throughout their jail stay or stays, and the number of repeat admissions in a given period (e.g., one year). This information would be important to gain a more-granular understanding of both the community- and jail-based resources needed to serve this population.

Finally, we were limited in the types of clinical and legal data we could access for this study and were limited only to those individuals with an established mental health concern (i.e., they were part of the jail mental health population). When ODR is determining whether an individual may be appropriate for diversion, it has access to information beyond what was available to the project team. This includes information about the use of publicly funded mental health services and additional detail about the circumstances surrounding current criminal charges. Even with our limited data source, we were able to reliably replicate ODR's decisionmaking on a small number of cases (as described in Appendix A); however, it is possible that access to more complete sources of data would have yielded information relevant to appropriateness for diversion.

Next Steps

As Los Angeles County continues to augment the availability of diversion programs in the community, we offer the following recommendations. First, we recommend considering ways to increase ODR's capacity for ongoing data collection. This could include leveraging existing data-collection efforts in Los Angeles, such as the Chief Information Office's Information Hub, which aims to integrate data from various public agencies, including DHS, DMH, Los Angeles Homeless Services Authority, Probation Department, and LASD. These types of cross-system data sets are also consistent with the recommendations of the Stepping Up Initiative.³⁸ However, criminal justice information is not currently available in the Information Hub, and there are challenges to using the data as a real-time

way to track outcomes.³⁹ Therefore, this might also include new data-collection infrastructure or efforts. An increased capacity for ongoing data collection is particularly important because there are numerous systemic changes and evolution of the systems in place. As there is expansion to other courts, it will be important to track the rates of release to community-based treatment in these different courts, identify differences, and work toward a consistent approach across courts.

Second, it is also critical to closely track the demand, process, and outcomes of diversion. This includes the number of individuals who are at least potential candidates (such as the mental health population in county jails); how many are brought to ODR's attention by attorneys, judges, and jail staff for consideration; how many are selected as candidates for diversion by ODR (and the reasons why others were not); how many of those who are recommended by ODR for diversion are ultimately diverted (and what reasons appear to be controlling for judicial decisions to reject diversion); how many diverted individuals remain stably housed; how many are reincarcerated; and how many are reconvicted. A recent study of ODR Housing is an excellent start to evaluating outcomes,⁴⁰ but it was limited to one program at one point in time. If ODR were given adequate resources to augment its current data-collection capabilities and policies and maintain them consistently going forward, it would be possible to continuously track progress and identify factors that are associated with successful versus unsuccessful diversion.

In addition, although our findings suggest that a substantial number of individuals could be eligible for ODR's programs, there are some legal procedural

issues at play that might prevent ODR from achieving diversion for all who are eligible. For example, as described, ODR Housing requires a guilty or no contest plea, and the program is much more intensive than the plea bargains that are often offered in early disposition courts throughout the county. One of our discussions with a legal stakeholder suggested that public defenders are sometimes less likely to encourage their clients to take advantage of the program for that reason. In contrast, California Penal Code § 1001.36 allows for pre-plea diversion, ultimately resulting in the dismissal of charges at the conclusion of the period of diversion—a key benefit of the program. If ODR shifted more of its programming to be available to individuals pre-plea through this program articulated in the penal code, this could greatly alleviate the issue. Finally, it is important to note that these diversion programs are voluntary, and not every individual who is offered diversion will accept diversion. Therefore, although our estimates reflect those who might be appropriate for diversion, it is likely that some subset would decline to participate in a diversion program.

Finally, although ODR is responsible for developing diversionary programming, there are other local and state agencies that have a stake and a role in providing solutions. Therefore, future work to address the needs of justice-involved individuals with mental illness will continue to require the input and resources of a variety of stakeholders. Similarly, the landscape of diversion is shaped not only by local innovations but also by state-level initiatives and statutes, such as California Penal Code § 1001.36. It will be valuable to understand how to best leverage these opportunities to create additional diversion opportunities in Los Angeles County. Ultimately,

[A]lthough our findings suggest that a substantial number of individuals could be eligible for ODR's programs, there are some legal procedural issues at play that might prevent ODR from achieving diversion for all who are eligible.

policymakers can more effectively address this growing issue without compromising public safety by better understanding who can be successfully diverted, the services that they need, and the opportunities to develop innovative and effective programs.

Appendix A. Developing and Testing the Reliability of the Legal and Clinical Criteria

Given our aim to create reliable criteria to use in the second phase of our study, we first needed to test whether our criteria reliably reflected the factors that ODR takes into consideration when determining whether to put someone forward as a candidate for diversion. To do this, we used a preliminary study conducted by ODR for testing purposes, which enabled us to apply our criteria to a set of cases reviewed by ODR and refine the criteria as necessary.

ODR Preliminary Study

In an effort to provide the BOS with a preliminary estimate of the divertible population, ODR conducted an initial chart review to yield an estimate of divertible cases in February 2019.⁴¹ For this effort, ODR staff reviewed 500 cases, randomly selected from the jail mental health population (i.e., individuals in mental health housing units, taking psychotropic medications, or both). They then conducted a review of each individual, using the same sources of information that they consult when evaluating a potential client's legal and clinical status to determine whether they will ask the court to place the individual into an ODR diversion program. This process began with a review of each individual's criminal history, including current charges (made up of the details surrounding the nature and circumstances of the charges) and past convictions. Next, they made a determination of whether there were any factors present that were very likely to render an individual legally unsuitable for diversion by the court. If no such factors were present, they then reviewed an individual's clinical background, including information from the jail medical record

as well as information regarding use of public mental health services in Los Angeles County. Based on both the legal and clinical review, they then made a determination about each person's overall potential for safe release to community-based treatment, with each person categorized as *appropriate*, *potentially appropriate*, or *not appropriate* for diversion. As part of this work, ODR reviewed a small subset of the cases in its sample with relevant stakeholders to validate the decisions. ODR's research found that an estimated 56 percent of individuals were appropriate for diversion, 7 percent were potentially appropriate, and 37 percent were not appropriate.

RAND Reliability Check

In developing the legal criteria, we had an ongoing series of discussions with ODR, which provided insight into the nature of decisions made for existing programs and the nature of decisions made as part of its preliminary study. We also considered the views of legal stakeholders who were interviewed in the beginning of our study. Based on these sources, we developed several versions of the eligibility criteria. Regarding legal criteria, we began with about 50 different "formulas" for examining case charge information collected by ODR and rating each case. We also had a preliminary version of clinical criteria, which we applied over varying time frames (e.g., six months versus one year before the date of the chart review).

To ensure that our criteria reliably reflected ODR's decisionmaking, we randomly selected 50 cases used in the ODR preliminary study to test our criteria. Our aim was to achieve at least 80 percent agreement with ODR's decisions to calibrate our criteria. To conduct this reliability check, we divided the 50 randomly selected cases into two groups. Based on this review, we identified the combination of legal and clinical criteria that best matched the ODR decisions. Although some versions of these criteria reached 80-percent agreement, we used the results as an opportunity to refine the criteria and maximize agreement. We discussed each of the 25 cases with ODR to understand its decisionmaking process and adjust the criteria accordingly.

We then applied the revised criteria to the second set of 25 cases. We tested two versions of the criteria we developed and again assessed the percentage of agreement with ODR decisions. We discussed the cases in which there was disagreement with ODR, which informed final updates to the criteria to maximize agreement. Our final set of criteria resulted in 92-percent agreement across the 50 test cases. Legal criteria are presented in Appendix B, and clinical criteria are presented in Appendix C.

Appendix B. Legal Criteria

Legal Criteria

Cases that are considered appropriate candidates to put forward for diversion include those that are considered to have no obvious legal issue; those considered potentially appropriate are those in which there are certain charges or statuses that raise some question of suitability but the issue is not one that appears to be an obvious bar for diversion. All cases categorized as appropriate or potentially appropriate were reviewed for clinical eligibility (see Appendix C).

Individuals were classified as not appropriate if there was a current felony charge or a prior felony conviction within five years for murder, voluntary or involuntary manslaughter, rape or sexual insertion, sex crimes involving minors, carjacking, the use of firearms (such as possession during the commission of a crime, discharging, or brandishing), or kidnapping for the purpose of sexual offenses or robbery.

Potentially appropriate candidates were those who had current felony charges for arson involving residential settings or injuries, certain types of firearm possession crimes (such as possession of a firearm by a convicted felon), and certain types of kidnapping or stalking crimes. Cases included in the potentially appropriate categories involved instances for which additional detail about the nature of the charges or circumstances surrounding the charges would need to be reviewed more closely prior to making a final decision regarding appropriateness for

diversion. Individuals who were in the jail population for only parole violations were rated as potentially appropriate unless another aspect of their legal status rated them as not appropriate.

It is important to note that, in large part, these charges generally reflect those that are considered to be more serious threats to public safety. Individuals with these charges are likely to be perceived as a greater ongoing threat to public safety, and, based on our key informant discussions, these charges are considered by legal stakeholders when determining whether an individual may be appropriate for diversion. However, it is important to note that this is not a proxy for a formal risk assessment, which would provide more data about actual risk to public safety.

Individuals in our sample were classified as legally appropriate if they did not fit one of the preceding criteria. The specific citations that were used to identify individuals who were not appropriate or potentially appropriate for diversion appear in Table B.1 (this table contains only penal code citations; for a version with details about the specific charges, see Appendix E). Table B.1 does not contain an exhaustive list of charges but rather reflects only those current charges and prior convictions that were identified as relevant in our discussions with ODR, particularly those represented within the review sample.

Data Source

The information source we used to apply the legal suitability criteria was criminal history data found in the Los Angeles Superior Court's Data and Document Exchange Service (DDES) online system, which was one of several sources used in the ODR preliminary study. Because we were not granted access to DDES, we relied on ODR to use the system on our behalf and to provide us with current charge and recent conviction information. ODR staff indicated that pending legal status and criminal history are the factors they most frequently consider when making assessments regarding potential legal suitability.

TABLE B.1

Legal Review Criteria

Appropriateness for Diversion	Cites/Charges Included				
Not appropriate	PC 32	PC 262	PC 288.5	PC 664/215(a)	
	PC 182.5	PC 262(a)(1)	PC 288.7(a)	PC 664/261(a)(2)	
	PC 186.28	PC 264.1(a)	PC 288.7(b)	PC 667.1	
	PC 187	PC 264.1	PC 289(a)	PC 667.15(a)	
	PC 187(a)	PC 266	PC 289(a)(1)	PC 667.15(b)	
	PC 187(a)(1)	PC 266h	PC 289(a)(1)(a)	PC 667.51	
	PC 189	PC 266h(b)(1)	PC 289(a)(1)(b)	PC 667.61	
	PC 190.05	PC 266i(b)(1)	PC 289(a)(1)(c)	PC 667.71	
	PC 192(a)	PC 266i(b)(2)	PC 289(b)	PC 667.8(a)	
	PC 192(b)	PC 266j	PC 289(c)	PC 667.8(b)	
	PC 207(b)	PC 267	PC 289(d)	PC 11418(a)(1)	
	PC 209(b)	PC 269	PC 289(e)	PC 11418(a)1	
	PC 209(b)(1)	PC 272	PC 289(f)	PC 11418(b)1	
	PC 209.5	PC 272(a)(1)	PC 289(g)	PC 11418(b)2	
	PC 209.5(a)	PC 286(a)(1)	PC 289(h)	PC 11418(b)3	
	PC 215	PC 286(b)(1)	PC 289(i)	PC 11418(c)	
	PC 215(a)	PC 286(b)(2)	PC 289(j)	PC 11418.5	
	PC 217.1(b)	PC 286(c)(1)	PC 311.1	PC 12021.5	
	PC 220(a)(2)	PC 287(b)(1)	PC 311.11(a)	PC 12022(a)(1)	
	PC 236.1(c)	PC 287(b)(2)	PC 311.11(b)	PC 12022(a)(2)	
	PC 236.1(c)(1)	PC 287(c)(1)	PC 311.11(c)	PC 12022(b)(2)	
	PC 236.1(c)(2)	PC 288(a)	PC 311.11	PC 12022(c)	
	PC 245(a)(2)	PC 288(b)	PC 311.4(b)	PC 12022.3(a)	
	PC 245(a)(3)	PC 288(b)(1)	PC 311.4(c)	PC 12022.3(b)	
	PC 245(b)	PC 288(b)(2)	PC 417(a)(2)	PC 12022.4	
	PC 245(d)(1)	PC 288(b)2	PC 417(b)	PC 12022.5(a)	
	PC 245(d)(2)	PC 288(c)(1)	PC 417(c)	PC 12022.5(b)	
	PC 245(d)(3)	PC 288(c)(2)	PC 417.3	PC 12022.53(b)	
	PC 245.5(b)	PC 288a(b)(1)	PC 417.4	PC 12022.53(c)	
	PC 246.3	PC 288a(b)(2)	PC 647.6(a)(1)	PC 12022.53(d)	
	PC 246.3(a)	PC 288a(c)(1)	PC 647.6	PC 12022.55	
	PC 261	PC 288.2	PC 653f(b)	PC 18745	
	PC 261(a)(2)	PC 288.3	PC 664/187(a)	PC 25800	
	PC 261(a)(3)	PC 288.4(a)	PC 664/187(a)(1)	PC 26100(b)	
	PC 261(a)(4)	PC 288.4(b)	PC 664/187	PC 26100(c)	
	PC 261.5(c)	PC 288.5(a)	PC 664/192(a)	PC 26100(d)	
	PC 261.5(d)				
	Potentially appropriate	HS 11370.1(a)	PC 646.9(c)	PC 25850(a)	PC 29805
		HS 11370.1	PC 664/207(a)	PC 25850(c)(1)	PC 29875
		HS 11550(e)	PC 667.85	PC 25850(c)(2)	PC 29900(a)
PC 166(d)(1)		PC 12022.2(a)	PC 25850(c)(3)	PC 29900(a)(1)	
PC 207(a)		PC 24310	PC 25850(c)(4)	PC 29900	
PC 207		PC 24510	PC 25850(c)(5)	PC 29905	
PC 209(a)		PC 24610	PC 25850(c)(6)	PC 30305(b)	
PC 451(a)		PC 25100(a)	PC 25850(c)(7)	PC 30305(b)(1)	
PC 451(b)		PC 25100(b)	PC 25850	PC 30315	
PC 451.1		PC 25100	PC 27500	PC 30320	
PC 451.5		PC 25110(a)	PC 27590	PC 32310	
PC 452(a)		PC 25300	PC 28250	PC 33215	
PC 452(b)		PC 25400(a)(1)	PC 29800(a)(1)	Current charges (parole violation only) ^a	
PC 646.9(b)		PC 25400(c)(4)	PC 29800		

NOTES: All other cases were considered appropriate for purposes of our review. PC = California Penal Code; HS = California Health and Safety Code.

^a There is no specific penal code associated with this criterion.

Appendix C. Clinical Criteria

Clinical Criteria

Our clinical criteria were developed to detect individuals who might have SMI, whether formally diagnosed or not. We developed four indicators of SMI. If any of these indicators were present, then an individual was considered *appropriate* for diversion. If no indicators were present, then an individual was considered *not appropriate* for diversion.

The four indicators include the following:

1. Incompetence to stand trial or conservatorship (past or present)
 - If an individual has been determined to be incompetent to stand trial or has been placed on conservatorship, he or she was considered to be divertible.
2. Qualifying diagnosis of serious mental illness
 - We determined whether an individual had a qualifying diagnosis. This could include a qualifying diagnosis made at least once at the jail or a qualifying diagnosis given at least twice historically in the community. Qualifying diagnoses are summarized in Table C.1.
3. Prescribed an antipsychotic or mood stabilizer
 - It appeared that diagnoses were not always reliably documented in the jail medical record. Therefore, being prescribed an

antipsychotic or mood stabilizer was considered an indicator of SMI. Relevant psychotropic medications are summarized in Table C.2.

4. Presence of observed behaviors consistent with SMI
 - We wanted to account for the possibility that some individuals with SMI had not yet been formally diagnosed. Therefore, we also determined whether there was evidence of observed behaviors consistent with the qualifying diagnoses (e.g., hallucinations, delusions, mania, persistent positive symptoms after multiple weeks of incarceration so that they do not appear to be due to effect of substance).

Data Sources

We used two data sources to assess the clinical criteria. First, data regarding incompetence to stand trial and conservatorship were provided along with the legal information provided by ODR. Second, data regarding clinical diagnoses, medications, and observed behaviors were obtained from the jail medical record. We obtained this information through a review of relevant mental health notes in the 12 months prior to the date of the data pull (June 6, 2019).

TABLE C.1
Qualifying Diagnoses

Category	Diagnosis	ICD-10		
Psychotic	Schizophrenia	F20.9		
	Schizoaffective disorder			
	Bipolar type	F25.0		
	Depressive type	F25.1		
	Delusional disorder	F22		
	Brief psychotic disorder	F23		
	Schizophreniform disorder	F20.81		
	Psychotic disorder due to another medical condition			
	With delusions	F06.2		
	With hallucinations	F06.0		
	Other specified spectrum and other psychotic disorder	F28		
Unspecified schizophrenia spectrum and other psychotic disorder	F29			
Mood	Bipolar I disorder	Current/most recent episode manic	Current/most recent episode hypomanic	Current/most recent episode depressed
	Mild	F31.11		F31.31
	Moderate	F31.12		F31.32
	Severe	F31.13		F31.4
	With psychotic features	F31.2		F31.5
	In partial remission	F31.73	F31.71	F31.75
	In full remission	F31.74	F31.72	F31.76
	Unspecified		F31.9	
	Major depressive disorder with psychotic features	F32.3		F33.3
Intellectual disability	Intellectual disability (Intellectual developmental disorder)	F70–79		

NOTE: ICD-10 = International Statistical Classification of Diseases and Related Health Problems, 10th revision.

TABLE C.2

Antipsychotics and Mood Stabilizers

Medication Class	Medications
Antipsychotic medications	Atypical/second generation
	Aripiprazole (Abilify)
	Asenapine (Saphris)
	Clozapine (Clorzaril)
	Iloperidone (Fanapt)
	Lurasidone (Latuda)
	Olanzapine (Zyprexa, Zypexa, Zydys, Relprevv)
	Paliperidone (Invega)
	Quetiapine (Seroquel)
	Risperidone (Risperdal)
	Ziprasidone (Zeldox)
	Typical/first generation
	Chlorpromazine (Thorazine, Promapar)
	Droperidol (Inapsine)
	Fluphenazine (Permitil, Prolixin)
	Haloperidol (Haldol)
	Loxapine (Loxitane)
	Perphenazine (Trilafon)
	Pimozide (Orap)
	Prochlorperazine (Compazine, Compro, Procomp)
	Thioridazine (Mellaril)
	Thiothixene (Navane)
	Trifluoperazine (Stelazine)
Mood stabilizers	Carbamazepine (Carbatrol, Eptol, Equetro, Tegratol)
	Divalproex sodium (Depakote)
	Lamotrigine (Lamictal)
	Lithium
	Topiramate (Topamax)
	Valproic acid (Depakene)

Appendix D. Results for Subgroups by Gender and Race/Ethnicity

Table D.1 reports our decisions regarding appropriateness for diversion by race/ethnicity.

TABLE D.1
Appropriateness for Diversion, by Race/Ethnicity

Final Decision	Percentage	95% Confidence Interval	Standard Error	Design Effect
Non-Latino white				
Appropriate	64.45%	55.06–72.85%	4.52%	0.965
Potentially appropriate	8.2%	4.28–15.13%	2.62%	0.985
Not appropriate	27.35%	19.85–36.39%	4.19%	0.954
Non-Latino black				
Appropriate	57.16%	50.5–63.58%	3.34%	0.997
Potentially appropriate	9.49%	6.27–14.12%	1.96%	0.982
Not appropriate	33.35%	27.51–39.74%	3.11%	0.958
Latino				
Appropriate	61.94%	54.91–68.5%	3.46%	0.966
Potentially appropriate	5.16%	2.76–9.44%	1.61%	1.007
Not appropriate	32.9%	26.68–39.78%	3.33%	0.956
Other				
Appropriate	67.72%	48.07–82.62%	4.08%	0.939
Potentially appropriate	4.28%	0.56–26.21%	4.08%	1.130
Not appropriate	28.0%	13.57–49.06%	8.79%	1.064

NOTE: Design effect refers to the ratio in the variance of an estimate between the current sample and a simple random sample without any survey design.

Appendix E. Legal Review Criteria Tables with Citations and Descriptions

The legal review criteria used in this study (including citations plus descriptions) appear in Table E.1 for cases that would be rated as not appropriate for diversion and in Table E.2 for those rated as only potentially appropriate.

TABLE E.1

Current Non-Misdemeanor Charges and Recent Felony Convictions Rated as Not Appropriate for Diversion

Cite	Description
PC 32	Accessories to murder
PC 182.5	Conspiracy: Gang participation with knowledge of and benefit from felonies
PC 186.28	Supplying or selling firearm used in street gang activity
PC 187	Murder, first degree
PC 187(a)	Murder and attempted murder
PC 187(a)(1)	Murder and attempted murder
PC 189	Murder, first degree
PC 190.05	Second-degree murder with prior 187
PC 192(a)	Voluntary manslaughter
PC 192(b)	Involuntary manslaughter
PC 207(b)	Kidnapping a victim under 14 for sexual assault
PC 209(b)	Kidnapping for robbery, sexual assault
PC 209(b)(1)	Kidnapping for sex offense or robbery
PC 209.5	Kidnapping during the commission of a carjacking
PC 209.5(a)	Kidnapping during a carjacking
PC 215	Carjacking
PC 215(a)	Carjacking
PC 217.1(b)	Attempt to kill public official
PC 220(a)(2)	Assault with intent to commit sex crime on a minor
PC 236.1(c)	Human trafficking for purpose of inducing minor for sex act
PC 236.1(c)(1)	Human trafficking for purpose of inducing minor for sex act
PC 236.1(c)(2)	Human trafficking for purpose of inducing minor for sex act
PC 245(a)(2)	Assault with a firearm
PC 245(a)(3)	Assault with a machine gun
PC 245(b)	Assault with a semiautomatic rifle
PC 245(d)(1)	Assault with a firearm upon a peace officer or firefighter
PC 245(d)(2)	Assault with a semiautomatic rifle upon a peace officer or firefighter
PC 245(d)(3)	Assault with a machine gun or assault weapon upon a peace officer or firefighter

Cite	Description
PC 245.5(b)	Assault with a firearm upon a school employee
PC 246.3	Discharging firearm in grossly negligent manner
PC 246.3(a)	Discharge a firearm with gross neglect
PC 261	Rape
PC 261(a)(2)	Rape by force or fear of bodily injury
PC 261(a)(3)	Rape by intoxicant (“date rape”)
PC 261(a)(4)	Rape of unconscious person
PC 261.5(c)	Unlawful sexual intercourse—minor over 3 years younger
PC 261.5(d)	Unlawful sexual intercourse—21 years or older, minor under 16 years
PC 262	Rape of spouse
PC 262(a)(1)	Spousal rape by force or fear of injury
PC 264.1(a)	Rape in concert by multiple defendants
PC 264.1	Rape in concert with force or violence
PC 266	Seduction of minor for prostitution
PC 266h	Pimping—under age 16
PC 266h(b)(1)	Pimping a minor over 15 years old
PC 266i(b)(1)	Pandering—minor 16 years or older
PC 266i(b)(2)	Pandering—minor under 16
PC 266j	Procurement of child under 16 for lewd and lascivious acts
PC 267	Abduction of person under 18 for purposes of prostitution
PC 269	Rape—child under 14 and 10 or more years younger than defendant (PC 261(a)(2 or 6), 264.1, 286, 288(a), or 289(a))
PC 272	Contributing to delinquency of a minor
PC 272(a)(1)	Contributing to a minor’s delinquency
PC 286(a)(1)	Sodomy of minor under eighteen
PC 286(b)(1)	Sodomy—victim under 18
PC 286(b)(2)	Sodomy—victim under 16, defendant over 21
PC 286(c)(1)	Sodomy—victim under 14, defendant 10 years older
PC 287(b)(1)	Oral copulation—victim under 18
PC 287(b)(2)	Oral copulation—victim under 16
PC 287(c)(1)	Oral copulation—victim under 14
PC 288(a)	Lewd act on child—victim under 14
PC 288(b)	Lewd act on child—by use of force or fear
PC 288(b)(1)	Lewd act by force on a child under 14
PC 288(b)(2)	Lewd act on child—by caretaker upon dependent adult by use of force or fear
PC 288(b)2	Lewd act on child—by caretaker upon dependent adult by use of force or fear

Cite	Description
PC 288(c)(1)	Lewd act on child—victim 14 or 15, defendant 10 years older
PC 288(c)(2)	Lewd act on child—by caretaker upon dependent adult by use of force or fear
PC 288a(b)(1)	Oral copulation—victim under 18
PC 288a(b)(2)	Oral copulation—victim under 16
PC 288a(c)(1)	Oral copulation - victim under 14
PC 288.2	Distribution or exhibition of lewd material to minor (as defined in PC 313)
PC 288.3	Contacting or attempted contact with a minor or person believed to be a minor with intent to commit specified kidnapping, child pornography, or other sex crimes involving a minor
PC 288.4(a)	Arranging meeting with a minor or person believed to be a minor for purpose of exposing genitalia or engaging in lewd and lascivious behavior
PC 288.4(b)	Going to place arranged under 288.4(a)
PC 288.5(a)	Continuous sexual abuse of a child
PC 288.5	Engaging in 3 or more acts of substantial sexual conduct with child under age 14
PC 288.7(a)	Engaging in specified sexual conduct with a child age 10 or under
PC 288.7(b)	Engaging in specified sexual conduct with a child age 10 or under
PC 289(a)	Sexual penetration by foreign object
PC 289(a)(1)	Sexual penetration by object by force
PC 289(a)(1)(a)	Sexual penetration by object by force
PC 289(a)(1)(b)	Sexual penetration by object by force on child less than 14 years old
PC 289(a)(1)(c)	Sexual penetration by object by force on minor 14 years old or older
PC 289(b)	Sexual penetration by foreign object
PC 289(c)	Sexual penetration by foreign object
PC 289(d)	Sexual penetration by foreign object
PC 289(e)	Sexual penetration by foreign object while victim intoxicated or anesthetized
PC 289(f)	Sexual penetration by foreign object
PC 289(g)	Sexual penetration by foreign object
PC 289(h)	Sexual penetration by foreign object—victim under 18
PC 289(i)	Sexual penetration by foreign object—victim under 16
PC 289(j)	Sexual penetration by foreign object—victim under 14
PC 311.1	Bringing into state matter depicting child in sexual conduct
PC 311.11(a)	Possess child pornography
PC 311.11(b)	Possess/control any matter relating to sexual conduct of a minor with a prior
PC 311.11(c)	Possess child pornography images
PC 311.11	Possess/control any matter relating to sexual conduct of a minor
PC 311.4(b)	Using minor to assist in distribution of obscene matter; posing or modeling involving sexual conduct
PC 311.4(c)	Using minor to assist in distribution of obscene matter; posing or modeling involving sexual conduct
PC 417(a)(2)	Brandishing a firearm

Cite	Description
PC 417(b)	Exhibiting loaded firearm at day care center
PC 417(c)	Exhibiting firearm in presence of peace officer
PC 417.3	Exhibiting firearm at occupant of vehicle
PC 417.4	Brandishing imitation firearm with threat
PC 647.6(a)(1)	Annoy or molest a child
PC 647.6	Molesting a child
PC 653f(b)	Solicitation to commit murder
PC 664/187(a)	Attempted murder
PC 664/187(a)(1)	Attempted murder
PC 664/187	Attempted murder
PC 664/192(a)	Attempted voluntary manslaughter
PC 664/215(a)	Attempted carjacking
PC 664/261(a)(2)	Attempted rape by force or fear of bodily injury
PC 667.1	Anal/genital penetration (289), victim disabled, over 65 or under 14, and prior 289
PC 667.15(a)	Exhibiting to minor matter depicting minor engaging in sexual conduct (288)
PC 667.15(b)	Exhibiting to minor matter depicting minor engaging in sexual conduct (3 or more acts of 288.5)
PC 667.51	Prior sex offense, minor victim
PC 667.61	Aggravated sex offenses—life sentence
PC 667.71	Sex crimes: 261(a)2, 262(a)1, 264.1, 288a, 288b, 289a, 288.5, 286c, 286d, 289
PC 667.8(a)	Kidnapping to commit sex offense (261, 262, 264.1, 286, 288a, 289)
PC 667.8(b)	Kidnapping victim under 14 to commit sex offense 286c, 288, 288a(c)
PC 11418(a)(1)	Possess weapon of mass destruction
PC 11418(a)1	Possession, manufacture, or use of weapon of mass destruction
PC 11418(b)1	Use of weapon of mass destruction against a person
PC 11418(b)2	Use of weapon of mass destruction in water or food
PC 11418(b)3	Use of weapon of mass destruction against animals or crops
PC 11418(c)	Use of weapon of mass destruction against natural resources
PC 11418.5	Credible threat to use weapon of mass destruction
PC 12021.5	Possession of firearm, detachable magazine, or belt-feeding device during street gang crime
PC 12022(a)(1)	Principal armed with firearm
PC 12022(a)(2)	Principal armed with assault weapon or machine gun
PC 12022(b)(2)	Personal use of deadly/dangerous weapon and carjacking
PC 12022(c)	Personally armed with firearm during specified drug offense
PC 12022.3(a)	Sexual offenses—use of firearm or deadly weapon in commission (261, 262, 264.1, 286,288, 288a, 289)
PC 12022.3(b)	Sexual offenses—armed with firearm or deadly weapon (261, 262, 264.1, 286, 288, 288a, 289)
PC 12022.4	Furnishing firearm for felony

Cite	Description
PC 12022.5(a)	Personal use of firearm
PC 12022.5(b)	Personal use of assault weapon or machine gun
PC 12022.53(b)	Personal use of firearm in specified crimes (see Appendix A)
PC 12022.53(c)	Personal discharge of firearm in specified crimes (see Appendix A)
PC 12022.53(d)	Personal discharge of firearm causing GBI or death in specified crimes (see Appendix A) or 12034 from vehicle or 246 at inhabited dwelling, vehicle, or aircraft
PC 12022.55	Discharging firearm from vehicle with GBI or death
PC 18745	Explosion or attempt to explode destructive device with intent to murder
PC 25800	Carrying a loaded firearm with intent to commit felony
PC 26100(b)	Allowing another to discharge firearm from vehicle
PC 26100(c)	Discharge of firearm from vehicle at a person
PC 26100(d)	Malicious discharge of firearm from vehicle

NOTE: GBI = great bodily injury.

TABLE E.2

Current Non-Misdemeanor Charges Rated as Potentially Appropriate for Diversion

Cite	Description
N/A	Instances in which the only current charges involve parole violations
HS 11370.1(a)	Possess loaded firearm and controlled substance
HS 11370.1	Possession of controlled substance while armed with firearm
HS 11550(e)	Under the influence while in possession of firearm
PC 166(d)(1)	Possession of firearm by prohibited person based on issuance of TRO/CPO
PC 207(a)	Kidnapping
PC 207	Kidnapping
PC 209(a)	Kidnapping for ransom or extortion
PC 451(a)	Arson—with GBI
PC 451(b)	Arson—inhabited structure or property
PC 451.1	Arson with prior; GBI to emergency personnel; GBI to more than one victim; multiple structures or special device used
PC 451.5	Aggravated arson—willful, malicious intent to cause injury to one or more persons, damage to property, etc.
PC 452(a)	Unlawfully causing a fire—with GBI
PC 452(b)	Unlawfully causing a fire—inhabited structure or property
PC 646.9(b)	Stalking violation of TRO
PC 646.9(c)	Stalking with prior specified felony conviction
PC 664/207(a)	Kidnapping
PC 667.85	Kidnapping victim under 14 to permanently deprive parent
PC 12022.2(a)	Armed with firearm with armor/metal piercing ammunition
PC 24310	Manufacture, import, sell, or possess any firearm camouflaging container
PC 24510	Manufacture, import, sell, or possess any firearm not immediately recognizable as a firearm
PC 24610	Manufacture, import, sell, or possess any undetectable firearm
PC 25100(a)	Criminal storage of firearm—1st degree
PC 25100(b)	Criminal storage of firearm—2nd degree
PC 25100	Criminal storage of firearm—1st degree
PC 25110(a)	Criminal storage of firearm—1st degree
PC 25300	Carrying a firearm in public place or on public street while masking one's identity
PC 25400(a)(1)	Carry concealed firearm in vehicle
PC 25400(c)(4)	Carrying a concealed firearm by felon
PC 25850(a)	Carrying a loaded firearm
PC 25850(c)(1)	Carrying a loaded firearm
PC 25850(c)(2)	Carrying a loaded firearm
PC 25850(c)(3)	Carrying a loaded firearm

Cite	Description
PC 25850(c)(4)	Carrying a loaded firearm
PC 25850(c)(5)	Carrying a loaded firearm
PC 25850(c)(6)	Carrying a loaded firearm
PC 25850(c)(7)	Carrying a loaded firearm
PC 25850	Carrying loaded firearm in vehicle, or on person in a public place with prior felony conviction, stolen firearm or by gang member
PC 27500	Delivering concealable firearm to person within any of the classes prohibited by California Penal Code 12021 or 12021.1
PC 27590	Delivering concealable firearm to person within any of the classes prohibited by California Penal Code 12021 or 12021.1
PC 28250	Knowingly provide false information on firearm application by felon or other prohibited person
PC 29800(a)(1)	Possession of firearm by felon
PC 29800	Persons prohibited from possessing firearms
PC 29805	Possession of firearm by persons with certain priors
PC 29875	Persons prohibited from possessing firearms
PC 29900(a)	Person previously convicted of violent offense prohibited from possessing firearms
PC 29900(a)(1)	Person previously convicted of violent offense prohibited from possessing firearms
PC 29900	Person previously convicted of violent offense prohibited from possessing firearms
PC 29905	Person previously convicted of violent offense prohibited from possessing firearms
PC 30305(b)	Possession of ammunition by person with street gang injunction
PC 30305(b)(1)	Possession of ammunition by person with street gang injunction
PC 30315	Possession of armor-piercing ammunition
PC 30320	Sale or transport of armor-piercing ammunition
PC 32310	Manufacturing, importing, keeping for sale, offering or exposing for sale, giving or lending large-capacity magazine
PC 33215	Manufacturer, transportation, sale, or possession of short-barreled shotgun

NOTES: TRO/CPO = temporary restraining order/criminal protective order.

Notes

¹ Torrey et al., 2010.

² Steadman et al., 2009.

³ Steadman et al., 2005.

⁴ LASD, 2019.

⁵ Katz, 2019.

⁶ Heilbrun et al., 2012.

⁷ National Association of Counties, American Psychiatric Association Foundation, Justice Center/the Council of State Governments, Bureau of Justice Assistance/U.S. Department of Justice, 2018, p. 1.

⁸ *Motion by Supervisors Mark Ridley-Thomas and Sheila Kuehl: Expanding Effective Diversion Efforts in Los Angeles County*, 2015.

⁹ Lacey, 2014.

¹⁰ DHS, 2018.

¹¹ Munetz and Griffin, 2006.

¹² DHS, Office of Diversion and Reentry, undated. ODR also operates a Maternal Health diversion program, which began in April 2018 and is open to any women who are pregnant during their jail stay. Women who agree to participate plead guilty to their charge and are placed on probation. Women do not necessarily have to have mental illnesses or be experiencing homelessness to participate.

¹³ Health Services, Office of Diversion and Reentry, Los Angeles County, 2019.

¹⁴ *Motion by Supervisors Mark Ridley-Thomas and Kathryn Barger: Scaling Up Diversion and Reentry Efforts for People with Serious Clinical Needs*, 2018.

¹⁵ *Motion by Supervisors Kathryn Barger and Hilda Solis: Addressing the Shortage of Mental Health Hospital Beds*, 2019, p. 2.

¹⁶ *Revised Motion by Supervisors Sheila Kuehl and Mark Ridley-Thomas: Developing the Los Angeles County Roadmap for Expanding Alternatives to Custody and Diversion*, 2019, p. 2.

¹⁷ *Motion by Supervisors Mark Ridley-Thomas and Sheila Kuehl: Expanding ODR's Housing Program Countywide to Safely Divert More Individuals with Serious Clinical Needs*, 2019.

¹⁸ *Motion by Supervisors Sheila Kuehl and Mark Ridley-Thomas: Expanding Countywide Diversion for Justice Involved Adults*, 2019; Garcia, 2019.

¹⁹ *LAC + USC Restorative Village Concept Paper*, undated.

²⁰ County of Los Angeles Chief Executive Office, 2019.

²¹ *Motion by Supervisors Hilda L. Solis and Sheila Kuehl: Cancellation of Design-Build Contract with McCarthy Building Companies, Inc.*, 2019.

²² *Motion by Supervisors Hilda L. Solis and Sheila Kuehl: Cancellation of Design-Build Contract with McCarthy Building Companies, Inc.*, 2019.

²³ ODR's preliminary study was conducted in advance of the current effort to provide the county with initial information to "guide the County's strategy for creating and scaling . . . program capacity" (Ochoa et al., 2019).

²⁴ ODR also diverts individuals diagnosed with intellectual disability, which was included as a clinically eligible diagnosis. However, because these cases tend to be infrequent, we did not construct criteria to detect undiagnosed cases of intellectual disability in the same way that we did for SMI.

²⁵ This decision reflects our assumption that both pre- and posttrial diversion options could be available, and that if posttrial individuals had been identified as appropriate for diversion earlier, they could have been diverted through a pretrial option. That said, in our data set, posttrial individuals may have had different legal or clinical characteristics than pretrial individuals, which we were unable to quantify. In the jail mental health population at the time the data were pulled, 2,665 people had all open charges, 1,163 had at least one case for which they had been sentenced, and 1,716 had been sentenced on all cases.

²⁶ The legal review did not require multiple raters, as a given charge was either present or not for each individual. However, the clinical data involved review of progress notes in the jail medical record, and certain criteria (i.e., presence of observed behaviors consistent with SMI) involved some clinical judgment. For this reason, we included a formal process for testing interrater reliability.

²⁷ One of the 20 charts included in the interrater reliability sample was flagged as a "challenging case" for review by a third clinician. Cohen's kappa for the remaining 19 charts was 0.86 (considered strong interrater reliability; McHugh, 2012).

²⁸ We defined *age categories* by the quartiles in the sampling frame: younger than 28 years old, 28 or older, and younger than 35, 35 or older and younger than 45, and 45 or older. We grouped race/ethnicity into four groups: Latinos of all races, non-Latino white, non-Latino black, and others. Sampling strata were defined by age categories, race/ethnicity groups, and sex. There was a total of 32 strata theoretically (four age categories by four race/ethnicity groups by two sex levels). However, this study's sampling frame contained 29 strata because the remaining three strata had no individuals. In each stratum, a simple random sample was drawn where the sample size was proportional to the size of the stratum (i.e., the number of individuals in the stratum). The sample size in all strata was truncated to be no smaller than four so that we could have a minimal number of sampled individuals for any subpopulation. This strategy yielded a roughly self-weighted sample (i.e., the sample weights of all sampled individuals were roughly equal).

²⁹ The finite population correction accounts for the fact that the target population is finite (i.e., 5,544 in this study), and the uncertainty or variance in any sample-based estimate is reduced when the sample size is relatively large compared with the finite population size. Our sampling rate of 9 percent gave a modest amount of reduction by adjusting the finite population correction.

³⁰ Cochrane, Grisso, and Frederick, 2001; Gowensmith, 2010; Warren et al., 2006.

³¹ Qureshi et al., 2015.

³² Cowell et al., 2008.

³³ Gowensmith and Murrie, 2019.

³⁴ White Bird Clinic, undated.

³⁵ Hunter et al., 2018.

³⁶ UCLA Clinical and Translational Science Institute, undated.

³⁷ DeMatteo et al., 2013.

³⁸ National Association of Counties, American Psychiatric Association Foundation, Justice Center/the Council of State Governments, Bureau of Justice Assistance/U.S. Department of Justice, 2018.

³⁹ Hunter et al., 2017.

⁴⁰ Hunter and Scherling, 2019.

⁴¹ Ochoa et al., 2019.

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About This Report

In 2015, the Office of Diversion and Reentry Division (ODR), an internal department of the Los Angeles County Department of Health Services, was created to redirect individuals with serious mental illness from the criminal justice system. Part of ODR's mission is to identify individuals currently incarcerated in a Los Angeles County jail who are experiencing a serious mental health disorder and, to the extent practical, provide them with appropriate community-based levels of care with the goals of reducing recidivism and improving health outcomes. Such redirection from the traditional criminal justice process is often characterized as *diversion*. To better build and scale efforts to support this work, in 2018, the Los Angeles County's Board of Supervisors asked for a study of the existing county jail mental health population to identify those who would likely be eligible for diversion based on their legal suitability and clinical eligibility. ODR selected the RAND Corporation, in collaboration with Groundswell Services, Inc.; the University of California, Los Angeles, School of Law Criminal Justice Program; and the University of California, Irvine, to help it address this question through joint funding from Los Angeles County and the Conrad N. Hilton Foundation. This report includes the results from a legal and clinical review of recently incarcerated individuals identified with a serious mental health condition. The authors also provide recommendations for future programming and research. This report will be of interest to state and county governments as well as other organizations serving criminal justice-involved populations with serious mental illness.

Justice Policy Program

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