

Strategies for Managing Overlapping Criminal & Dependency Clients

HON. STEPHEN MANLEY, SANTA CLARA COUNTY SUPERIOR COURT

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Beyond the Bench | Tuesday, December 17, 2019

MAJOR CHANGES WE ARE SEEING IN POLICY

- A recognition that in criminal justice reform we must look beyond the individual convicted of the crime
- A recognition of the impact of incarceration on families and, specifically on children

MAJOR CHANGES WE ARE SEEING IN POLICY

- A call for courts to step up and end the silo system for criminal justice
- A call for our courts to incorporate criminal, dependency and family courts together in working towards rehabilitation of the offender by addressing the critical issues that go beyond “sentencing”, “probation,” and “reentry”.

WHAT IS DRIVING THIS CHANGE?

- A recognition that criminal offenders are often parents and caregivers as well.
- A recognition of the significant trauma for children when their parents are in jails and prisons or on probation or parole

WHAT IS DRIVING THIS CHANGE?

- A recognition that many criminal offenders at the time their cases are being adjudicated have pending cases relating to their children in dependency and family court.
- A recognition that mentally ill offenders often have children and that treatment must involve the family rather than solely focus on separating the mentally ill in jails and state hospitals.

RECENT EXAMPLES OF POLICY CHANGES

- AB1810 (2018) permitting broad diversion of many mentally ill offenders regardless of the charge.
- SB394 (2019) permitting diversion for offenders who are primary caregivers for youngsters under 18.
- Pretrial diversion (pending) to eliminate the bail system and permit defendants to live at home with their families.

REASONS FOR MENTAL HEALTH DIVERSION –AB 1810

- A growing crisis/disproportionate representation.
- 20% of inmates in ca jails on psychiatric medications.
- 30% of prisoners in CDCR are in the mental health system.

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REASONS FOR MENTAL HEALTH DIVERSION –AB 1810

- State hospitals are at capacity.
- County jails continue to see an ongoing increase in mentally ill offenders who are entering the criminal justice system and are incarcerated.

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Eligibility for Mental Health Diversion

1. Diagnosed DSM-5 disorder
2. Disorder played significant role in charged offense
3. Disorder would respond to treatment
4. Waives speedy trial rights & consents to diversion (unless IST)
5. Agrees to comply with treatment
6. No unreasonable risk of danger if treated in community

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GUIDANCE TO THE COURTS ON IMPLEMENTATION

- Set minimum standards which empower the judge to grant diversion in his/her discretion.
- Does not create an entitlement or right to diversion for defendant.
- Judge then needs to approve treatment program.
- Reviews must take place at a minimum of 6 months.
- Challenge for the courts in monitoring the progress in treatment of these offenders.

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PRIMARY CAREGIVER DIVERSION

For Primary Caregivers of minor children

- The offender may be referred to supportive services and treatment in already existing in existing programs and outpatient services.
- Provider must send regular progress reports.
- If the defendant is in both juvenile and criminal court proceedings, may not duplicate efforts.
- Program may include education, counselling, treatment and training programs.

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ELIGIBILITY FOR PRIMARY CAREGIVER DIVERSION

- Custodial parent or legal guardian of the child or children.
- Prior to arrest resided with the child.
- Presently provides care of financial support for the child.
- The defendant's absence in the child's life would be detrimental to the child.

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BASIS FOR THIS NEW DIVERSION STATUTE

- Nearly 50% of all incarcerated adults were living with minor children prior to incarceration.
- 10 million minors in this country experience parental incarceration during their childhood.
- 900,000 children in California had a parent in the criminal justice system as of 2008 (last date that data was collected).

BASIS FOR THIS NEW DIVERSION STATUTE

- Studies show that having an adult criminal record is the best predictor of unemployment and poverty.
- Direct impact on childhood development with lower educational achievement, high rates of absenteeism, bullying, and withdrawal. (ACE Scores)

KEY FINDING IN A REPORT THAT FOCUSED ON THE ALAMEDA AND SAN FRANCISCO JAILS

The majority of incarcerated individuals in San Francisco and Alameda County jails are parents or caregivers and are disproportionately people of color. Overall, 69% of survey participants reported that they were a parent or primary caregiver for at least one child 25 years old or younger. Almost half (49%) of participants identified as African American followed by Latino (18%), Caucasian (14%), Asian or Pacific Islander (7%), American Indian/Alaska Native (1%) and multi-racial or other race (11%).

WHAT ARE THE EFFECTS ON CHILDREN?

Increase in mental health and behavioral problems due to paternal incarceration.

- Aggression
- Internalizing
- Externalizing

Increase in the risks of homelessness and infant mortality due to parental incarceration.

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| Homelessness | 70% |
| Infant mortality | 40% |

The disparities are substantial nearly double in comparing blacks with whites in child well-being when a parent or parents are incarcerated.

CALIFORNIA BAIL REFORM: SB 10 (PRESENTLY ON HOLD PENDING OUTCOME OF 2020 ELECTION)

- Every superior court must create a program or division to determine the risk level of each offender on arrest and make recommendations for conditions of release pending adjudication of their case.
- Provides that as to high and medium risk defendants the judge must consider whether there are conditions that would allow a safe release of the defendant.
- Permits conditions of release to include testing, treatment, other services, as well as scram, GPS, home detention, and monitoring.

WHAT IS DRIVING BAIL REFORM?

- In 2015 only 10.5% of arrestees booked into county jails were released without being required to post money bail.
- The result is that the majority of defendants held in jail prior to trial are held there not because of a risk to public safety, but because of their poverty.
- Minority individuals are overrepresented in this group.
- Our jails have become overcrowded at substantial expense to the counties and tax payers.

WHAT IS DRIVING BAIL REFORM?

- In other jurisdiction around the country, notably Washington D.C. and the entire state of Kentucky, 80% of arrestees are granted pretrial release without the requirement of posting money bail.
- In Washington and Kentucky, over 80% of those released pretrial make their court appearances, and over 90% do not commit any new crimes while on pretrial release.
- Our jails have become overcrowded at substantial expense to the counties and tax payers.

DO COLLABORATIVE COURTS OFFER AN ANSWER TO THE NEW POLICY DIRECTION?

1. The positives

- Expertise
- Goals
- Treatment and services

2. The negatives

- Each collaborative court often lives in its own eco system and silo.
- They do not work together with the same client.
- Duplicate treatment plans and differing expectations make them very difficult to navigate.

WHAT CHANGES AND NEW APPROACHES DO WE NEED IN OUR COLLABORATIVE COURTS?

THESE NEW POLICY REFORMS CHALLENGE US TO CONSIDER HOW TO WORK TOGETHER RATHER THAN FOLLOW A SERPARATE TRACK



CASE SCENARIO #1

- John Richards is in jail charged with auto theft (his cousins vehicle that he substantially damaged in a police chase). He had stopped taking his medications and was hearing voices telling him to take the car, he states.
- He is the father of four children and has a minor record. He was residing at home at the time of the offense and had a job as a waiter.
- He has filed a request through his public defender for mental health diversion and to see a psychiatrist on an ongoing basis while living at home with his wife and children.
- The district attorney strongly objects, saying he is unpredictable and could have placed the young children in the car as he tried to elude the police, endangering them.
- He and his wife are already in the dependency court as to the youngest child working towards reunification, but having a real struggle because of ongoing drug use (the child was removed on her arrest by her probation officer for daily drug use while the child was playing in a public park. The three other children remain at home.

QUESTIONS FOR YOUR TABLE

1. If Diversion is being considered, the suitability and eligibility factors have little to do with the ongoing dependency case. If you are considering granting Diversion, Would you place conditions on the Diversion, and what would they be?
2. Should he be placed outside the home, and, if so, where is the financial support for the family?
3. This new challenge obviously places great stress of the wife and the other three children, how does the Dependency Collaborative Court work with this challenge?
4. There are no relatives available to help. Assume the mother goes on a drug run and is using drugs daily, and assume the father who has been diagnosed with schizophrenia is now taking his medications that he stopped in the past, as the Dependency Judge would you consider allowing the father to reside in the home and care for them? If so what would influence your decision?

CASE SCENARIO #2

- Maria Lopez is in Family Treatment Collaborative Court. Custody of the children was given to her husband (ages of the children are 3, 9 and 12) after the dissolution because of her ongoing drug and alcohol use in the home causing the children to miss school and child care. She is asking for supervised visitation leading to full visitation.
- She is also in the Drug Court because of her repeated convictions for paraphernalia, use, possession and low level sales to support her use.
- The Family Treatment Court has a very strict protocol on abstinence and she must test two times per week and one dirty test leads to a denial of all visitation.
- In the Drug Court, the team is using a harm reduction approach and she has transitioned from residential treatment to outpatient. She is on random drug testing but a positive test is used as a treatment tool and adjustment in her treatment plan and relapses do not lead to automatic sanctions.

QUESTIONS FOR YOUR TABLE

1. How do we reconcile these two approaches to drug use if we can?
2. Should the two Judges meet and discuss her case?
3. Should there be only one drug testing protocol?
4. Assume the children are very traumatized by the ongoing chaos of seeing their mother and then being told that they may not see her, and they tell the Judge they love her and want to see her. The Social Worker from CPS states that the mother should not see the children at all so that they can develop a regular routine.

CASE SCENARIO #3

- Johana Bhati is the sole caretaker for her children. She works full time to support them and is under ongoing pressure of losing her housing for her family because she cannot hold a job for more than a few weeks, and the demands of transporting her children (one of whom is a special needs child) and feeling totally inadequate has caused her great trauma because she herself was raised in a foster home where she was abused. The father is unknown.
- She drinks daily and has been recently arrested for drunk driving (the children were not in the car) as well as grand theft of clothing from Target in excess of \$1500.
- She is in jail, and a friend is temporarily watching the children.
- Her attorney requests that she be granted Primary Caregiver diversion to return to care for her children.

QUESTIONS FOR YOUR TABLE

1. What are the considerations you would use in determining whether or not Diversion should be granted?
2. Would you recommend pre-trial release with conditions such as a scam device to measure alcohol use 24 hours per day, and hold off on the decision to grant or not grant Diversion?
3. Would you recommend her for a collaborative Court and, if so, which Court (Drug Court, Dependency Court, etc.)
4. What Court or combination of Collaborative Courts could provide the needed treatment and services for this family? Who takes the lead?
5. The victim wants restitution. How would you handle that request if Diversion was granted?



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