

Have We Decriminalized Mental Illness?

Kate Warburton, DO
California Department of State Hospitals

Judge Larry Brown, Esq.
Sacramento Superior Court



1

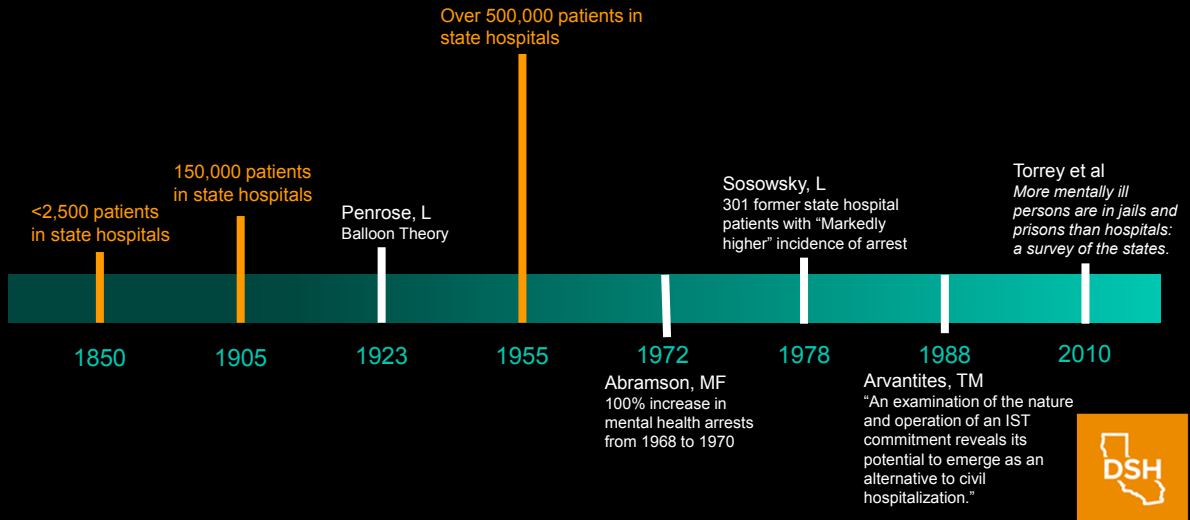
Have We Decriminalized Mental Illness?



Katherine Warburton, DO
Medical Director
California Department of State Hospitals

2

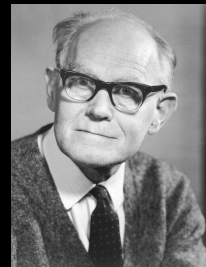
State Hospital Overutilization: An historic problem



3

Penrose Effect/Penrose's Law

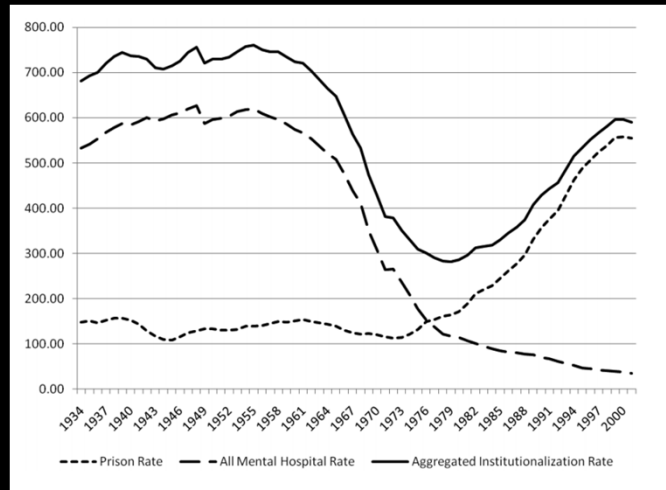
In 1939, British psychiatrist Lionel Penrose described an inverse relationship between the number of patients in mental hospitals and the number of sentenced adult prisoners



Penrose LS. Br J Med Psychol 1939;18(1):1-15;

4

US Rates of Institutionalization Per 100,000



Harcourt BE. J Legal Stud 2011;40(1):39-83.

5

Abramson 1972

- Lanterman-Petris-Short (LPS) Act of 1969 made criteria for initial involuntary treatment more stringent and the only avenue to indeterminate involuntary commitments were after criminal conviction
- In 1970, the year after LPS went into effect, there was a 36% increase in criminal complaints and over **100% increase in mental commitments because of incompetency to stand trial** in San Mateo County

Abramson MF. Hosp Community Psychiatry 1972;23(4):101-5.

6

Incompetent to Stand Trial (IST) Commitments Are Positively Correlated to Deinstitutionalization

- IST commitments increased post-deinstitutionalization by an average of 20%
- The increase in IST admissions, as a percentage of all hospitalizations, was positively correlated to the rate of deinstitutionalization ($r=0.93$)
- “An examination of the nature and operation of an IST commitment reveals its potential to emerge as an alternative to civil hospitalization.”

Arvanites TM. Bull Am Acad Psychiatry 1989;17(3):311-20.

7

Symptoms of Schizophrenia

Hallucinations- perceiving things that are not there, usually voices

Delusions- misperceiving reality through false beliefs, often paranoia

Disorganization – in speech and behavior

Negative symptoms - diminished emotional expression and avolition

Schizoaffective disorder includes a mood component

The majority of patients are **not aware that they are ill**

8

People With Schizophrenia Often Don't Know It

- Poor insight is a **lack of awareness of having an illness**, of the deficits caused by the illness, the consequences of the disorder, and the need for treatment
- Poor insight is...
 - **Common in schizophrenia (~60%)**
 - Has a major impact on the course of the illness and causes treatment nonadherence

Amador X et al. Arch Gen Psychiatry 1994;51(10):826-36; Buckley PF et al. CNS Drugs 2007;21(2):129-41; Czobor P et al. Eur Neuropsychopharmacol 2015;25(8):1158-66

9

Medication

- According to systematic reviews of observational and naturalistic studies, following treatment, **complete recovery or remission** occurs in:
 - ~38% of patients with multi-episode psychosis
 - ~55–57% of patients with first-episode psychosis
- Adherence to antipsychotics is associated with symptomatic and psychosocial remission, as well as community integration

Huxley P et al. Brain Behav 2021;11(6):e02172; Catalan A et al. Eur Psychiatry 2021;64(1):e69; Bernardo M et al. Rev Psiquiatr Salud Men 2017;10(3):149-59.

10

Medication (cont.)

- Possession of psychotropic medication **reduces the odds of arrest.**
- The **combined effects of medication possession and outpatient services reduces risk of arrest even further**
- Effect size of antipsychotic medication is comparable to those for other chronic conditions such as hypertension, high cholesterol

Van Dorn et al. Psych Services 2013
Leucht et al. BMC Medicine 2015

11

What is Happening Now: Case Vignette

37-year-old transient male. Police called when patient refused to leave a fast food restaurant. Police asked him to step outside and he complied. During a search, the police informed patient he was not welcome at the Jack in the Box. He became upset and tried to get out of the grasp of the officer. He then tried to call the police on an imaginary phone. He was talking to himself about the devil. He was missing his left eye and informed police he took out his eye because the devil told him to. The police attempted to handcuff patient and the patient struggled, was tasered multiple times. Charged with **battery with injury on a police officer and resisting executive officer.**

12

Outcomes

While people with Schizophrenia make up only 1% of overall population, they make up:

- 20-30% of homeless population
- 15% of state prison population
- 24 % of jail population
- People with schizophrenia die 20+ years earlier than the rest of us
- One of the top 15 leading causes of disability worldwide

HUD 2010 AHAR to Congress (Paquett), Folsom and Jeste et al 2005, Ayano et al BMC Psychiatry (2019), Garcia and Haskins (2020), US DOJ (2006), . Sullivan et al 2000,

13

A National Problem

- Colorado to hire consultant to ensure speedy competency ...[Colorado Springs Gazette](#)-Aug 2, 2016
- With state hospitals packed, mentally ill inmates wait in county jails ...[Dallas Morning News \(blog\)](#)-Apr 21, 2016
- Jail wait times are inhumane for the mentally ill The [Delaware County Daily Times](#)-Jul 18, 2016
- Federal trial to tackle Washington's mental competency wait lists. The [Seattle Times](#). March 14, 2015.
- Jails are becoming 'new psych hospitals' Jackson Hole ([Wyoming](#)) News & Guide-Aug 10, 2016
- ACLU revives lawsuit against Pa. over 'off the charts' delays to treat mentally ill defendants. [Pennlive.com](#) May 11, 2017
- Lawsuit alleges Utah agencies 'unconstitutionally delay' mentally ill inmates' treatment. [Deseret News Utah](#) September 9, 2015
- Long, Dangerous Wait for Hospital Beds for Those Incompetent to Stand Trial [KQED California](#) October 20,2015
- New York plan aims to divert mentally ill people from jail's revolving door. The [New York Times](#). December 2, 2014.



14

Forensic Patients in State Hospitals



- 74%↑ in the number of forensic patients in state hospitals from 1999 to 2014
- 72%↑ the number of **IST** patients from 1999 to 2014

15

UC Davis Napa Research

- Started in 2008
- Large sample
- Initially Napa specific
- Expanded into statewide protocol



16

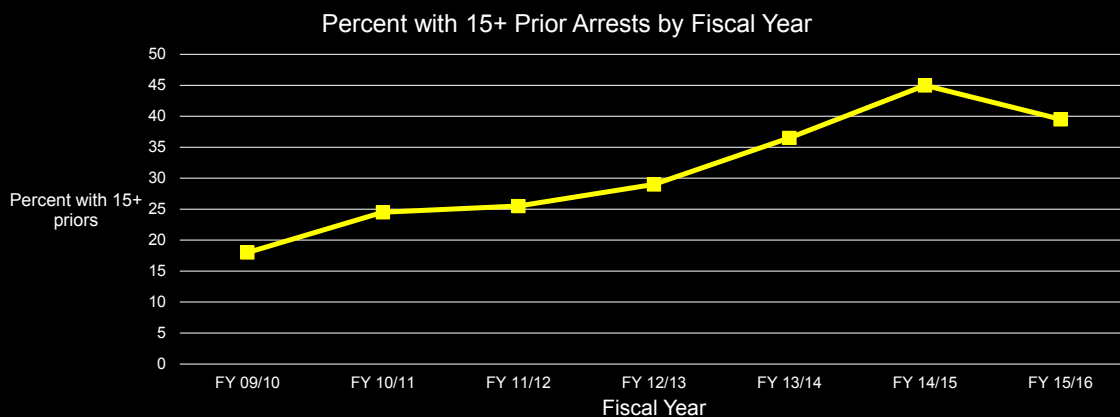
The Incompetent to Stand Trial Crisis

- RESULTS
 - 67% of these patients are experiencing homelessness when they enter the system,
 - 47% have not received Medicaid reimbursable mental health services in the six months prior to entry, and
 - 70% are rearrested within 3 years of discharge.
 - Referrals are skyrocketing



17

More Criminal History?



18

Rankings

- Responses ranked high in importance*:
 - Inadequate general mental health services (3.45)
 - Inadequate crisis services in community (3.71)
 - Inadequate number of inpatient psychiatric beds in community (3.78)
 - Inadequate ACT services in community (4.22)



19

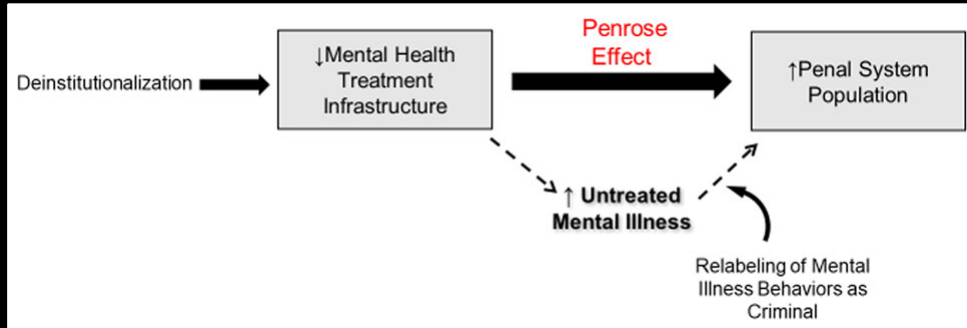
Psychiatric Bed Capacity

- Reductions to local psychiatric bed capacity were significantly correlated with an average increase of 256.2 jail inmates

Gao YN. J Psychiatr Pract 2021;27(1):33-42.

20

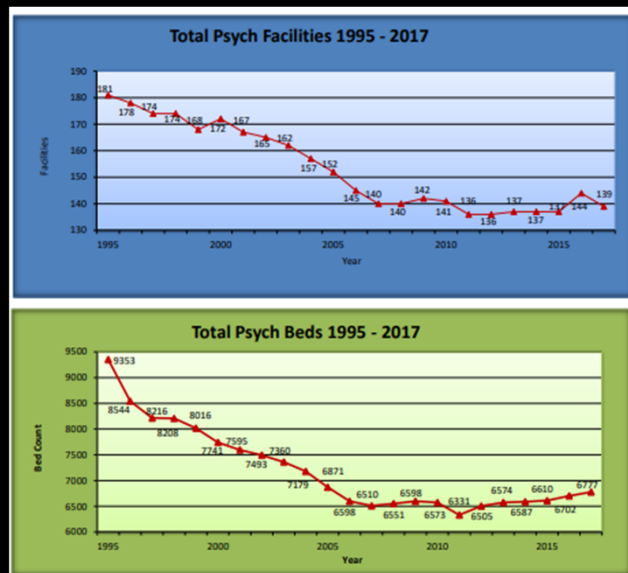
Penrose Explained



Grecco GG, Chambers RA. Transl Psychiatry 2019;9(1):320.

21

California Hospital Association Report



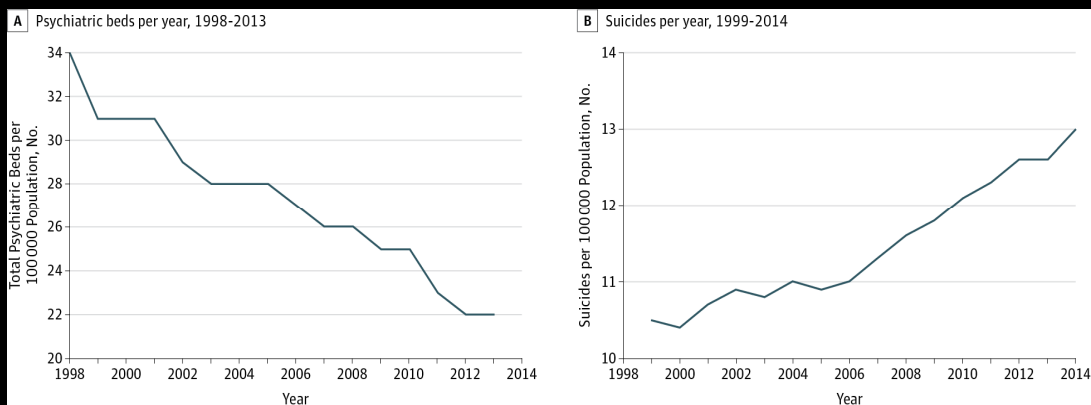
22

Organization for Economic Co-operation and Development (OECD)

- Average of **71** beds per 100,000 in 35 OECD countries
- Expert recommendation is **50** beds per 100,000
- United states is **22** beds per 100,000
- California... **17** beds per 100,000
- 25 of 58 California counties do not have inpatient psychiatric services

23

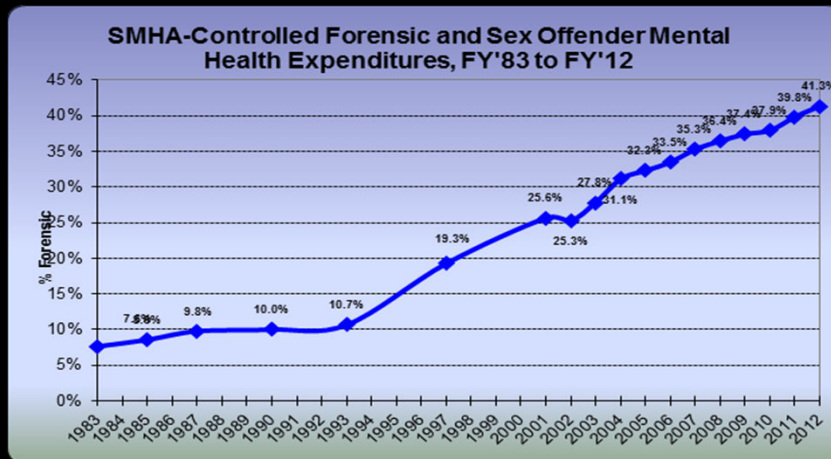
Relationship Between Psychiatric Beds and Suicide



Basthiampillai T et al. JAMA 2016;316(24):2591-2.

24

National % Forensic Spending



Courtesy of Ted Lutterman, NRI



25

Link Between Beds and Arrest

Study of police discretion indicates that when confronted with the choice between arresting a person with mental illness or bringing that person to an emergency room, **the most important factor was whether the officer thought that person would be admitted to a hospital bed.**

Green, TM International Journal of Law and Psychiatry, 1997

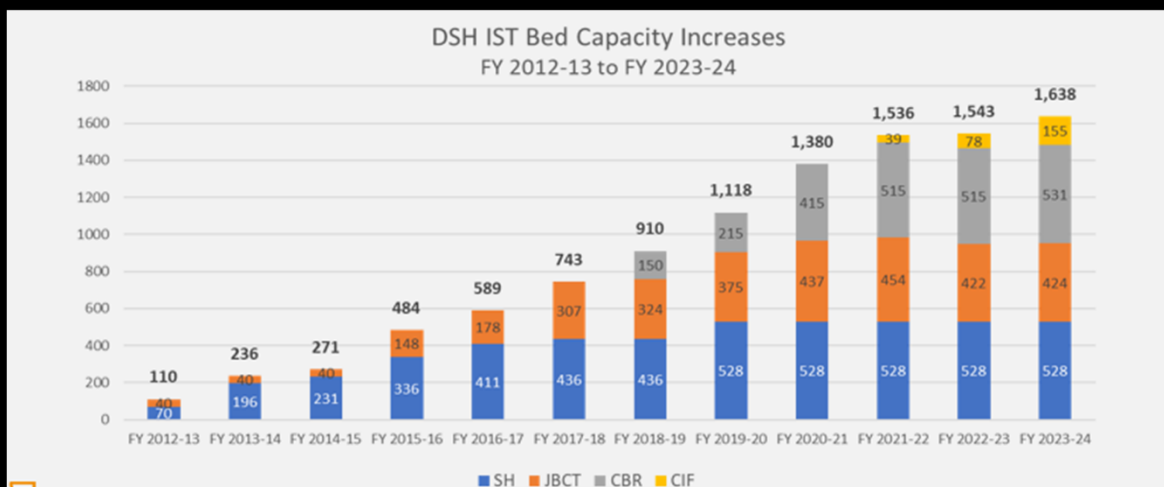
26

What is Happening Now: Case Vignette 2

45-year-old transient male entered a sandwich shop. Believed he owned the establishment. Locked the back door and put crates in front of it, per his comments to secure it because it “was busted”, and asked for a sharpie and paper to put an out of order sign on the back door. Proceeded to bathroom, cleaned it, and expressed concern about someone slipping due to excess water on the floor. Asked the clerk for the money in the register stating, “Don’t worry I’m the owner.” Was denied without incident. Then asked for a sandwich. Clerk ran out and into the storefront adjacent for help. At the time of arrest was delusion about owning stores and talking about “Tony the Tiger”. Pt charged with **false imprisonment and attempted robbery.**

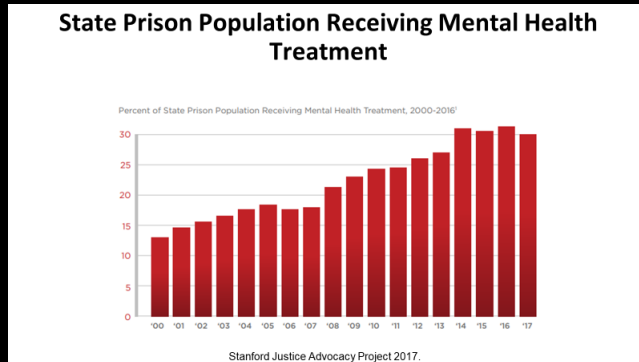
27

DSH Capacity Increases



28

California Outcomes



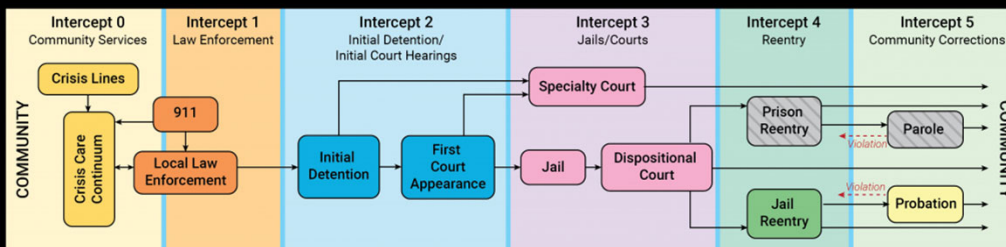
29

Let's Break the Cycle



30

Sequential Intercept Model (SIM)



31

CARE is Designed to Break the Cycle

- As a civil court process, CARE is an upstream diversion designed to break the cycle of homelessness, criminalization, and institutionalization
- The success of CARE will be based on whether this process can connect the respondent to the right services and supports including stabilization medications, wrap around behavioral health services, and housing.

32

DSH Diversion - Target Population

WIC § 4361(c)(1) Describes eligibility criteria

- “diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder” [(c)(1)(A)]
- “who have the potential to be found incompetent to stand trial for felony charges. . . Or who have been found [IST] for felony charges” [(c)(1)(A)]
- “significant relationship between the individual’s serious mental disorder and the charged offense OR between the individual’s conditions of homelessness and the charged offense” [(c)(1)(B)]
- “does not pose an unreasonable danger to public safety” [(c)(1)(C)]

33

33

Have We Decriminalized Mental Illness?



Behavioral Health Care Symposium

December 12, 2023

Sacramento Superior Court Judge Lawrence Brown

34

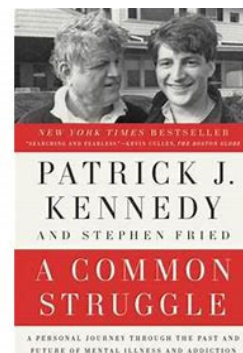


- As underscored by Dr. Burton's presentation, how to address mental illness societally has been subject to profound experimentation over the past two centuries.
- Hospitals ("asylums") were created in the mid-1800's as a compassionate approach, spearheaded by Dorothea Dix, whom saw inhumane treatment in jails for indigent persons.

35



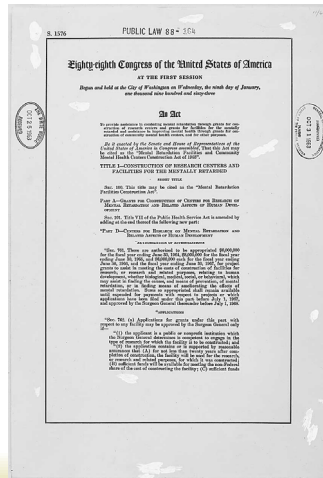
- 1960's to present, deinstitutionalization.
- "Reagan let everyone out"
- But as Rep. Kennedy's book explains, it took an ideologically village...



36

Community Mental Health Act of 1963

signed October 31, 1963



37



- Focus had been on persons with developmental disability, much more than serious mental illnesses such as schizophrenia.
- Measures born of the civil rights era; more humane approach to addressing mental illness than mass-institutionalization, aided by breakthroughs in antipsychotic medications.
- California's **Lanterman-Petris-Short (LPS) Act**, enacted July 1, 1969, restricting involuntary conservatorships, i.e. "5150"

38



- ☞ Only 1/2 of community-based centers every built, underfunded. State hospitals shuttered.
- ☞ Resulting impact has too often been displacement into jails and prisons.

39

Mental Illness & The Criminal Justice System



- ☞ “Although only 5.7% of the general population has a serious mental illness, approximately 18.5% of arraigned defendants and 23% of California prison inmates have a serious mental illness.”
- ☞ Dr. Warburton’s chart shows as high as 30% of CA prisoners receiving mental health treatment.
- ☞ The three largest mental health facilities are Los Angeles County jail, Cooks County (Chicago) jail, and Rikers Island (New York).

40



- ☞ And while Dr. Warburton's statistics are sobering re IST referrals, such cases represent a relatively small portion of overall cases involving persons with SMI in the criminal justice system.
- ☞ In Sacramento, on any given day, there are 130 felony ISTs (90 on waitlist, 40 in JBCT) in jail, comprising 15% of the 885 inmates with SMI in-custody (28% of 3,160 inmates)

41

Sacramento Jail's New Annex Could Cost Nearly \$1 Billion. (Sac Bee, 8/9/23)



- ☞ The Sacramento County Board of Supervisors voted 3-2 Tuesday to approve spending close to \$1 billion for a new intake and mental health annex at the Main Jail downtown. Building costs alone for the project have ballooned by \$200 million since supervisors first approved the expansion in December.
- ☞ The stated purpose of the new annex is to address the **Mays Consent Decree**, entered into in 2019.
- ☞ **[C]lass action lawsuit filed by incarcerated people represented by lawyers from Disability Rights California**, the Prison Law Office and Cooley LLP. The suit alleged inhumane and unconstitutional conditions at the Main Jail and the Rio Cosumnes Correctional Center near Elk Grove. The lead plaintiff in the case, Lorenzo Mays, spent eight years in solitary confinement awaiting trial, experiencing deepening depression, hallucinations and, with a lack of sunlight, a vitamin D deficiency

42



- ❧ Premise: Too many persons with SMI are not connected to mental health and/or drug treatment in our communities, whether by neglect or reluctance to accept services.
- ❧ Intervention then takes the form of a call for services to law enforcement because untreated behavior results in violating the Penal Code, whether vandalism, threats, assaults, and the like.
- ❧ The vast majority are non-violent and will respond well to medication, particularly if also treated for co-occurring addiction. Witness this in my treatment courts every day.

43



❧ Case Study: Steven Sealey

44

What to do?



- ❧ **Divert persons from jail to community-based treatment for felony and misdemeanor offenses under court-supervised mental health diversion and mental health court programs.**
- ❧ AB 1810 passed as part of 2018 state budget, resulting in Penal Code section 1001.36, Mental Health Diversion.
- ❧ Allows a judge, over the objection of the prosecutor, to release a person to treatment with requirements to take medication as prescribed, remain in housing, maintain sobriety and make regular court appearances.
- ❧ One-to-two-year participation before graduation and case dismissal.

45

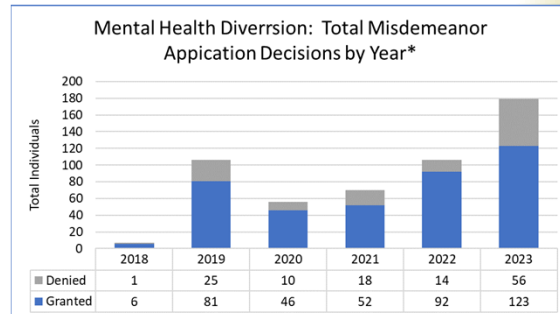
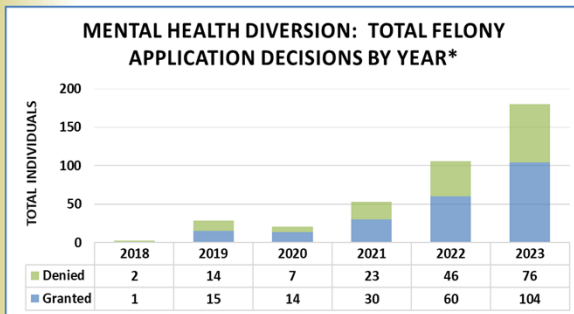
Mental Health Diversion (P.C. 1001.36)



- ❧ Sacramento has built out a very robust diversion program, but with tremendous strains being placed on DBH clinicians, mental health treatment agencies, substance use treatment providers, defense attorneys, prosecutors and courts.
- ❧ Great challenge: insufficient number of residential rehabilitation programs, particularly for men. 90 day wait.

46

Sacramento MHD



47

What to do?



- ☞ Give law enforcement an alternative to booking arrestees into county jail and/or taking to emergency rooms.
- ☞ Sacramento Mental Health Treatment Center had allowed for law enforcement drop-offs, but beds were cut from 100 to 50 in Great Recession.
- ☞ Bexar County (San Antonio, TX) **Restoration Center**; UC Davis hosted gathering pre-pandemic; 15-minute drop-off of persons in mental health crisis or under the influence; staffed by team of treatment professionals.

48

What to do? (cont.)




- ❧ **Increase non-criminal justice options to compel/encourage mental health treatment**
- ❧ Subject of great controversy between disability rights groups, and ACLU versus families and National Alliance on Mental Illness (NAMI)
- ❧ Repeated efforts to compel treatment, to include loosening the LPS law, have stalled legislatively for past many decades, but ground appears to be shifting in recent years.

49




- ❧ Assisted Outpatient Treatment (“Laura’s Law”) had been county-optional since enacted in 2003; **AB 1976** changed law to create a requirement counties *opt-out*; game-changer in many counties.
- ❧ **CARE Act**. Many similarities to AOT, but more power to the court and great resources for housing.
- ❧ Challenge of AOT: cannot compel medication compliance.
- ❧ **SB 43** from most recent session modifies LPS to expand definition of “gravely disabled”

50

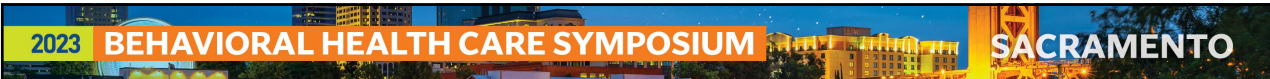


2023 CHA
BEHAVIORAL HEALTH CARE
SYMPOSIUM SACRAMENTO

Questions



51




2023 BEHAVIORAL HEALTH CARE SYMPOSIUM SACRAMENTO

Thank You

Kate Warburton, DO
Medical Director
California Department of State Hospitals
Katherine.warburton@dsh.ca.gov

Larry Brown, Esq.
Judge
Sacramento Superior Court
brownl@saccourt.ca.gov



52