

Criminal Justice (CJ) Workgroup

Behavioral Health Advisory Board (BHAB)

Purpose

- The Criminal Justice Workgroup has identified the following 2021 goals:
 - Build BHAB's internal knowledge base by engaging with stakeholders and investigating the impact of behavioral health system of care disparities in the criminal justice system.
 - Build BHAB's internal knowledge base by engaging with stakeholders and learning about evidence-based best practices surrounding community-based public safety programs utilizing the sequential intercept model.
 - Build BHAB's internal knowledge base by exploring restorative and transformative programs with justice-involved people with behavioral health needs to better understand the spectrum of care while addressing disparities.

Focus

- Gathering information (and available data) relating to the intersection of the criminal justice and behavioral health systems.
- Exploring restorative justice options to replace incarceration when appropriate.
- Within approximately one year from start (March 2021-April 2022), prepare a report including behavioral health (BH) / criminal justice (CJ) recommendations in specific areas not yet fully implemented in San Diego County.
- Use the Sequential Intercept Model as a framework for BH & CJ recommendations.

Information Gathered by the CJ Workgroup includes the following sources:

1. David Mullen, BHS liaison with criminal justice partners.
2. Matt Wechter, Deputy Public Defender – Homeless Court.
3. Audrey Bordeaux, Public Defender's Office – Collaborative Courts in San Diego County that include drug courts, veteran's court, MH Court, Collaborative Court, Homeless Court etc.
4. Non-governmental organization presenters – focus on racial equity in criminal justice.
5. Dr. Krelstein, Clinical Director, BHS – Hub system.
6. Dr. Marvin, VP Community Research Foundation, PERT Division, Phuong Quach, Behavioral Health Program Coordinator, BHS, and Exodus representatives – Psychiatric Emergency Response Team (PERT) and Mobile Crisis Response Team (MCRT).
7. Dr. Luke Bergman, Director, BHS – Hub System.
8. Karna Lau, Division Chief, Probation and Michelle Romero, Director, Behavioral Health Network (Optum).
9. Rachel Solov, District Attorney's Office – Adult Diversion programs.

Recommendations Draft

Recommendation 1: “It is recommended that cash bail be replaced in most felony and all misdemeanor cases in San Diego County and that a no-cash process include mental health and substance abuse treatment and service referrals for detainees.”

BACKGROUND

On November 3, 2020, the voters of California rejected Proposition 25 (56% to 44%) repealing legislation and thus keeping in place the use of cash bail for detained suspects awaiting trials. The effort was aided by lobbying from the bail bond industry.

On December 8, 2020, the newly elected District Attorney of Los Angeles County made effective a directive to his office noting the unfairness of cash bail especially its effect on low-income communities of color in Los Angeles. The Los Angeles plan was based on the presumption of release without cash bail relying on other conditions such as electronic monitoring, home detention, drug testing, and waiver of appearances for non-consequential pre-trial hearings. The Los Angeles plan applied to all misdemeanors and non-violent (non-serious) felonies.

On March 25, 2021, the unanimous California Supreme Court held, in the *In re Kenneth Humphrey* case, that it was unconstitutional to require defendants to remain in custody because they cannot afford cash bail. The court noted that other conditions of release—such as electronic monitoring, regular check-ins with a pre-trial case manager, community housing or shelter, and drug and alcohol treatment could (in many cases) protect public and victim safety as well as assure the arrestee’s appearance at trial. The General Counsel for the Golden State Bail Agents’ Association was quoted in the Los Angeles Times (late edition of March 25, 2021) that although profits will be reduced “we can live with it” (the California Supreme Court decision).

In the May 24-31, 2021 edition of Time Magazine, a short opinion piece in support of abolishing cash bail, noted that ending cash bail is one way to dismantle inequities faced by people who enter the criminal justice system.

EFFECT ON THE INCARCERATED POPULATION

Although there is no certain way of knowing, it is estimated that at least 40% of the incarcerated population in the United States suffer from some form of mental illness. It is arguable that mental health treatment out-of-custody (released with no cash bail) should have better results than in-custody treatment. The total number in jail has decreased from about two million in 2018 to about 1.8 million in 2020 (statement by Federal Judge Jed Rakoff in his book, “Why the Innocent Plead Guilty”). Possibly early release because of COVID-19 is one reason for the decrease. Although African-Americans constitute 12-13% of the U.S. population, they constitute 33% of the U.S. jail population (Professor Anna Spain Bradley in her forthcoming book, “Global Racism.”). In San Diego County, the jail population probably has a higher percentage of Hispanics than African-Americans.

The Innocence Project has demonstrated that greater numbers of incarcerated individuals have been proven to be innocent. Eyewitness testimony is continually undermined by scientific (DNA) evidence. Suicides and death rates of individuals in San Diego County jails have risen since 2009. In an article by Genevieve L. Jones-Wright, Executive Director of Community Advocates for Just and Moral Governance, in the San Diego Union-Tribune, dated July 14, 2021, it is noted that “At least 159 people (most of whom were being held pre-trial—had not been found guilty of a crime) have died in the custody of the Sheriff.

As long as the COVID-19 pandemic is with us, more incarcerated individuals (who can't post cash bail) will die in custody. In the March 15-22, 2021 edition of Time Magazine, the impact on defendants is revealed: "...With more than 2,400 COVID-19 deaths behind bars, according to the Marshall Project, immediate concerns about becoming infected may outweigh future repercussions. The impact on the rest of your life only matters if you're alive...It doesn't matter if you can't find housing if you died in jail."

CONCLUSION

To adopt something like the "Los Angeles Plan" on NO CASH BAIL (the pre-trial release policy presumption may be overcome in serious felony cases), the San Diego County Board of Supervisors should strongly encourage (possibly by providing funding/incentives) the San Diego County District Attorney's Office to institute a NO CASH BAIL plan and the Board of Supervisors should issue public statements in favor of such a plan. With the reduction in the jail population, the San Diego County Sheriff's Department should be able to better handle the mental health treatment of its reduced jail population. With this plan, it is possible that the San Diego County Superior Courts may need to ask the State of California for more resources for its pre-trial release supervision staff. We don't anticipate any effect on the San Diego County Probation Office as a result of the NO CASH BAIL plan.

Recommendation 2: "It is recommended that the 9-8-8 mental health hotline be initiated to supplement the 9-1-1 emergency phone system in San Diego County."

BACKGROUND

In 1989, a Eugene, Oregon social services agency (the White Bird Clinic) acquired funds to form Crisis Assistance Helping Out On The Streets (CAHOOTS) teams to relieve the burden on police by answering 9-1-1 calls involving mental health crises. The idea was to respond to behavioral health issues including suicide threats, substance abuse, domestic disputes, and homelessness that could escalate with tragic results when armed officers respond. As quoted in People Magazine (July 26, 2021) Eugene, OR Police Chief Chris Skinner stated that "if the 9-1-1 call turns out to be less about criminality and more about behavioral health, being able to do a warm handoff to CAHOOTS is really important." In 2019 Eugene, OR CAHOOTS teams answered 24,000 calls and needed police backup only 150 times. It was noted that these teams are often able to de-escalate or resolve crises before people spiral out of control. The teams of two clinicians wear casual clothes and are not armed.

Over the years, a number of other cities have set up CAHOOTS-like programs. For example, in 2020 the Denver program saw 748 "crisis" calls diverted from police (and a 3% drop in armed officer responses).

About 25 years ago, San Diego County formed its Psychiatric Emergency Response Team (PERT) program which provides emergency assistance and referral (mostly through 9-1-1 calls) for individuals in behavioral health crisis. PERT pairs a uniformed/armed law enforcement officer with a licensed mental health clinician. At present there are approximately 70 PERT teams, five of which are dedicated to homeless outreach. In fiscal year 2019-2020, PERT conducted 35,701 contacts in the community.

Many 9-1-1 operators are heroes who handle their responsibilities exceptionally well. Most of them know how to dispatch a law enforcement officer or fireman. But many are ill-equipped to handle a mental health crisis and to stay calmly engaged long enough to deal with the situation.

One other available contact for those in crisis is the National Suicide Prevention Lifeline: 1-800-273-8255. This line provides confidential support for people in distress including prevention and crisis

resources (possibly in the local area). The sponsors of this lifeline support the 9-8-8 easy-to-remember phone number.

NEED FOR 9-8-8 MENTAL HEALTH HOTLINE

On October 17, 2020, the President signed legislation establishing 9-8-8 as the universal number for mental health crisis and suicide prevention. The Centers for Disease Control and Prevention (CDC) did a survey in August 2020 and found that four in 10 adults experienced a behavioral health condition such as depression and anxiety. The legislation, which does not go into effect until July 2022, will ensure that people in crisis get help not “handcuffs.”

California introduced legislation in March 2021 to provide funding for the Federal 9-8-8 legislation through a surcharge on phone lines similar to 9-1-1. San Diego County (like other California counties) has been focusing on setting up MCRT to provide services and mobile crisis units which would become operational in the near future.

9-8-8 has advantages over 9-1-1 in many instances as callers would be connected with counselors and support teams staffed with mental health professionals at the outset. When police are the first responders (even with PERT clinicians as team members) the situation too often rapidly turns violent as uniformed officers with weapons can unintentionally escalate the situation. Those who call 9-1-1 but report a mental health crisis should be transferred to 9-8-8 (which will be established) and dispatchers for both lines would be able to decide if police, fire, or medical responders are needed.

CONCLUSION

Assuming the California implementing legislation is enacted, it is recommended that the San Diego County Board of Supervisors appoint a 9-8-8 Local Planning Council as soon as feasible to coordinate San Diego County’s behavioral health crisis services with 9-8-8 centers, emergency medical services, law enforcement, cities, and when appropriate, other specialty behavioral health warm lines and hotlines.

Recommendation 3: “It is recommended that in the next two years the supervision of mental health services in San Diego County jail facilities be transitioned from the Sheriff’s Department to the Health and Human Services Agency (HHS) In light of the September 8, 2021 Memorandum of Understanding (MOU) and the budget approval to add 160 new county behavioral health employees to strengthen the county jails.”

BACKGROUND

Against the backdrop of overcrowding in the California state prison system, the Public Safety Realignment Act (AB 109) was put in place effective October 1, 2011. It essentially transfers responsibility for supervising certain kinds of offenders from state prisons to county jails. Although not relevant to this recommendation, AB 109 also increased the caseload of county probation officers vis-a-vis state parole agents.

In San Diego County, the effect of putting numerous felons into the county jail system meant that the Sheriff’s Department had many more inmates for whom to provide health care (including mental health) and social services. Although AB 109 was supposed to include only “non-serious, non-violent and non-sex-related” felonies, it still had an overwhelming effect on the make-up of the seven County jail facilities overseen by the Sheriff.

Regarding mental health services, the Sheriff's Department increased its staffing with mental health clinicians and programs but faced criticisms in the local press about jail deaths (including an increase in suicides). Several years ago, a workgroup of the Behavioral Health Advisory Board recommended the use of the Columbia Suicide Severity Rating Scale (C-SSRS) as a screening tool in jail facilities. With the present COVID-19 challenge, the C-SSRS screening tool has not been able to be utilized in screening and jail deaths and suicides have occurred (including one suicide In Juvenile Hall in September 2021).

After several years of dealing with how to deliver the best medical and mental-health services to jail inmates, the Sheriff's Department as reported on December 24, 2020, withdrew its proposal to outsource most of its work in this area noting that San Diego County employees do the job better.

In a news report in the San Diego Union-Tribune of December 24, 2020, it was reported that the Sheriff had previously proposed outsourcing of all health care (physicians, dentists, nurses, and other experts) to a single contractor. The article noted that incoming Board of Supervisors' Chair Nathan Fletcher was proposing re-structuring the jail health care system to put HHSa in charge.

In a news report by City News Service dated September 8, 2021, it was reported that the MOU was the start of a multi-year commitment to build out better medical and behavioral health services in the jails and connect individuals to supportive services when they leave. The Chief Medical Officer of the Sheriff's Department is quoted as saying that partnering with HHSa represents the full spectrum of public health.

NEED AND PROPOSED IMPLEMENTATION

San Diego County (and the entire country) has been faced with an overwhelming health care crisis because of the COVID-19 pandemic. This recommendation keeps in place the Sheriff's responsibility for the overall physical health of the jail population but cedes to HHSa the main responsibility for mental health diagnosis and treatment recognizing that the proposed partnership with experienced mental health professionals will better serve all.

It is noted that the Sheriff's Department has had in its employ a number of outstanding mental health staff/employees. It is proposed that these individuals be offered comparable positions at HHSa over the next two years. Implementation will be difficult for some of these individuals and a phased-in program seems best. If there are specific location assignments such as Central Jail, Vista Jail, or any of the other jail facilities, that might be a consideration for placement. Seniority in the Sheriff's Department might be another consideration in the implementation. Lateral salaries should be offered if possible.

CONCLUSION

It is recommended that the Board of Supervisors direct that all steps be taken in the next two years to transition the handling of all mental health services in County jail facilities from the Sheriff's Department to the HHSa.

Recommendation #4: "It is recommended that a data gathering "ombudsman" be established in the Chief Administrative Office of San Diego County to gather, assess and share generic information concerning the mental health and substance use background and treatment of those adults within the County's criminal justice system."

BACKGROUND AND NEED

Although data is essential to decision-making on programs and budgets, each of the major agencies responsible for mental health/substance abuse treatment in the criminal justice system in San Diego County have their own independent systems for collection and use of information. The Sheriff's Department, the Probation Department, Behavioral Health Services, as well as the District Attorney, the Public Defender, and the Courts gather and keep information, which is specific to their agency, is not collected in the same way, and is rarely shared.

One reason for the reluctance to share specific information among these agencies as well as private contractors is the fear of violating the Health Insurance Portability and Accountability Act (HIPAA). However, it is clear from Federal regulations promulgated by the U.S. Department of Health and Human Services that the privacy rules only govern individually identifiable health information not anonymously collected data as contemplated to be gathered by the proposed ombudsman. However, there are HIPAA provisions which concern how protected health information can be used and disclosed for research and essential government functions without an individual's authorization.

In moving the needle forward by placing coordination for data gathering, analysis, and sharing in the Chief Administrative Office, the data ombudsman should be able to help the Equity and Racial Justice Director (already established in the Chief Administrative Office) in identifying and repairing areas where the potential for bias, discrimination, and racism exist.

CONCLUSION

The details of whether to develop new software or a toolkit will be left up to the systems' experts of the sharing agencies and the data gathering ombudsman. It is contemplated that efforts be made to provide the public an opportunity to access online information.

It is recommended that the San Diego County Board of Supervisors direct the Chief Administrative Officer to establish a data gathering ombudsman within that office to gather, assess, and share information concerning the mental health and substance abuse background and treatment of those adults within the County's criminal justice system.