



Bill Fact Sheet: Pretrial Diversion – Borderline Personality Disorder

Problem

Borderline personality disorder (BPD), a serious psychiatric disorder with a lifetime prevalence of 1–2% in the general population (Lenzenweger et al., 2007), is characterized by a pervasive pattern of instability in behavior (e.g., impulsivity, self-destructive acts), mood, identity, and interpersonal relationships. BPD is associated with significant distress and people with BPD have high rates of suicide (10%; Oldham, 2006). Under existing law, people with BPD are excluded from pretrial diversion for persons with mental disorders.

Background

People with BPD should be eligible for diversion. Like bipolar disorder, schizophrenia, and schizoaffective disorder, BPD is a serious mental illness. People with BPD are fully able to satisfy criteria 2-6 in the existing law. Additionally, five central facts warrant consideration:

1. BPD is no more dangerous than mental illnesses covered by the program.
2. BPD is treatable, highly heritable, and associated with significant neurobiological differences.
3. Treatment reduces the risk of recidivism.
4. The exclusion of BPD from diversion eligibility perpetuates harmful stigma about the disorder and limits access to care for people at high risk of suicide.
5. Specific cases of concern will be covered by provision 6 (below), *“the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community, even if BPD is removed as an exclusion.*

Summary

To help ensure people with BPD have equitable access to pretrial diversion, and to reduce recidivism within an often-misunderstood population, we encourage the legislature to remove the exclusion of BPD from pretrial diversion.

Existing Law

California Penal Code §1001.36 allows for pretrial diversion for persons with mental disorders. Eligibility for pretrial diversion requires that 6 criteria are met:

1. The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia.
2. The defendant's mental disorder was a significant factor in the commission of the charged offense.
3. In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment.
4. The defendant consents to diversion and waives the defendant's right to a speedy trial.
5. The defendant agrees to comply with treatment as a condition of diversion.

The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. Additionally, violent offenses are excluded (e.g., murder, rape, sexual abuse of a child).

Support

1. California Council of Community Behavioral Health Agencies (CBHA)