

MENTAL HEALTH DIVERSION

Law • Local Process • Sacramento County Experience • Evaluation

Community Corrections Partnership Advisory Board
Community Engagement Committee | October 14, 2026

Tonight's Goals

What we will cover

- Understand Mental Health Diversion and how Sacramento County implements it
- Hear community views about diversion, including benefits and concerns
- Discuss how to evaluate outcomes and AB 109 investments

A Few Terms We Will Use

No prior criminal justice system knowledge assumed

Diversion

A court-authorized pathway that pauses traditional criminal proceedings while a person participates in treatment.

Eligibility

Whether a person meets legal requirements to be considered.

Pretrial

Before the criminal case has been resolved through conviction or other final disposition.

Suitability

Whether diversion is appropriate under the statute, including treatment and public-safety factors.

Why Does Mental Health Diversion Exist?

The statute creates an alternative pathway for eligible defendants

- Recognize that certain mental health conditions can contribute to criminal justice involvement
- Create a pathway to appropriate treatment while the criminal case is pending
- Support treatment engagement and connection to longer-term care
- Protect public safety while addressing individual treatment needs

What Diversion Is — and Is Not

Clarifying common misconceptions

What it is

- A structured, court-approved treatment opportunity
- Individual eligibility and suitability assessment
- Treatment plan and oversight
- Possible dismissal after satisfactory completion

What it is not

- Automatic for anyone with a diagnosis
- Available for every charge
- A guarantee of dismissal
- The same as probation, Mental Health Court, or AB 109

Pause 1 | First Impressions

Committee and public discussion

LET'S DISCUSS

What are your initial thoughts about Mental Health Diversion as an alternative to traditional prosecution?

What potential benefits or concerns come to mind?

How Mental Health Diversion Evolved

Changes in law and operations affect year-to-year comparisons

- 2018: California establishes Mental Health Diversion.
- 2023: Expanded eligibility drives substantial local growth.
- 2024: County tackles in-custody backlog; Court reorganizes felony calendars.
- 2026: High demand continues; AB 46 signed.
- 2027: New AB 46 legal standards begin.

The Legal Framework

California Penal Code § 1001.36 | Enacted in 2018, subsequently amended

- A judge may grant diversion when statutory requirements are met.
- The Court considers defense and prosecution positions.
- Eligibility and suitability are distinct determinations.
- Some charges are excluded; AB 46 changes start in January 2027.

Eligibility: Who May Be Considered?

A clinical diagnosis alone does not determine the outcome

- A qualifying clinical disorder must be supported by expert evidence.
- The disorder must be a significant factor in the alleged offense.
- Specified charged offenses are excluded from diversion.
- Suitability is separately decided by the Court.

Suitability: What Does The Court Consider?

Treatment appropriateness, participation, and public safety

Clinical treatment

Whether a qualified expert considers the proposed treatment clinically appropriate.

Participation

Applicable consent, waiver, and compliance requirements, with statutory exceptions.

Public safety

Current 2026 safety test uses the narrower Penal Code § 1170.18 framework; AB 46 broadens it beginning January 2027.

Judicial decision

The Court considers the proposed plan and statutory factors, including the interests of the community.

AB 46: A Major Change Starting In 2027

Signed June 29, 2026 • Changes take effect January 1, 2027

- AB 46 revises California's Mental Health Diversion law.
- The public-safety suitability standard becomes broader.
- The proposed treatment plan must be clinically appropriate.
- Judges must explain a denial on the record.

AB 46: Public Safety Before And After

The key shift is the judicial risk assessment

- Before 2027: Suitability references the narrow Penal Code § 1170.18 risk framework.
- Starting 2027: The Court evaluates substantial and undue risk to another person's physical safety.
- The Court may weigh the present charge, criminal and violence history, treatment plan, and expert and attorney positions.

AB 46: Treatment, Victims, And Court Findings

The amendment changes more than the public-safety test

- Treatment plan: The clinical expert addresses whether the proposed plan fits the symptoms connected to the offense.
- Victims: The Court must consider applicable constitutional rights.
- Denials: The judge must orally state reasons on the record.
- Eligibility: The bill refines five-year diagnostic evidence requirements.

AB 46: What Might Change Locally?

Potential effects to monitor, not predicted outcomes

- Judicial grants and denials may change.
- Hearings could require different evidence, clinical planning, and victim input.
- Agency workloads and time to decision could change.
- Future evaluations must distinguish legal changes from operational performance.

Treatment, Safety, And Accountability

Community and Committee perspectives

LET'S DISCUSS

- **As diversion laws evolve, what benefits or concerns do you have about treatment, accountability, and community safety?**

What County services or supports would help address those concerns?

An Important Distinction: Diversion vs. Other Pathways

These approaches may involve some of the same agencies or providers

Mental Health Diversion

A pretrial legal process under Penal Code §1001.36; treatment is an alternative pathway during the case.

Collaborative Courts

Specialized court models using judicial oversight and coordinated services; typically, post-plea with heavy involvement from the District Attorney

AB 109 / Realignment

A funding and local supervision framework with overlapping service goals, but not the source of MHD authority.

How MHD Works In Sacramento County

A local overview • Detailed steps follow

1 Defense review

Counsel considers
eligibility

2 Assessment

BHS or other clinical
provider

3 Application

Defense files with Court

4 DA response

Opposition if appropriate

5 Court hearing

Judge decides; may
continue

6–7 Services & progress

Connection, monitoring,
outcome

Step 1: Defense Reviews Eligibility

The pathway begins with counsel

- Defense counsel reviews the charges and available clinical information
- Counsel advises the client about possible diversion and other options
- The person decides whether to pursue diversion

Step 2: Clinical Assessment

An appropriate treatment recommendation is needed

- For applicable County referrals, Behavioral Health Services conducts an assessment
- Clinical staff identify needs, an appropriate level of care, and referral options
- Other qualified clinicians or coverage pathways may be involved

Step 3: Defense Files An Application

Clinical findings inform the request

- Defense receives available clinical report and treatment recommendation
- Counsel prepares the motion or petition with supporting information
- Application is filed and a hearing date requested

Step 4: The DA Reviews The Application

Prosecution can respond to the proposed diversion

- District Attorney reviews the request and available information
- The DA may file opposition when appropriate
- Victim notification or input may require additional time

Step 5: The Judge Hears The Request

Judicial decision after argument and review

- Court hears defense and prosecution positions.
- Judge considers eligibility, treatment and applicable public safety law.
- A hearing may be continued; if the motion is denied, normal proceedings resume.
- AB 46 will require reasons for denial on the record beginning 2027.

Step 6: Connection To Services

Granting diversion is not the last step

- If the diversion application is approved, Court may schedule a hearing to confirm treatment and housing connections
- Compliance and Probation reporting requirements are clarified where applicable
- If the application is denied, ordinary criminal proceedings continue

Step 7: Progress and Multidisciplinary Review

Support and accountability over time

- Participants return to Court on progress calendars as directed
- Treatment, court, defense, prosecution and supervision partners may coordinate
- Court can adjust treatment or address participation concerns

Where A Diversion Application Can Stall

The time before a decision matters, particularly in custody

- Referral → Clinician assignment and assessment
- Assessment → Records, recommendations, and application preparation
- Filing → Prosecution review, hearing dates, and continuances
- Grant → Actual connections to treatment, housing, and support

What Has Improved In The Process?

JPRP documents operational changes since 2024

- Expanded Behavioral Health assessment staffing and coordination.
- November 2024 Superior Court calendar reorganization increased felony hearing capacity.
- Court decisions and grants continued at high volume in 2026.
- Timeliness and service connections still warrant ongoing measurement.

What Can Happen After Diversion Begins?

The Court remains involved

Satisfactory participation

The Court can dismiss the charges covered by the diversion proceedings when the statutory completion standard is met.

Concerns during participation

The Court can conduct a hearing and determine whether to modify treatment or reinstate criminal proceedings, depending on circumstances.

Court outcomes ≠ a complete measure of clinical or long-term success.

Pause 2 | Understanding The Process

Committee and public discussion

LET'S DISCUSS

What questions do you have about how someone moves from a diversion application into treatment?

Are there steps or requirements you would like our agency partners to explain further?

No Single Agency Runs The Entire Program

Mental Health Diversion is a shared process

Court

Makes the legal decisions; approves diversion and appropriate treatment; monitors case progress.

Defense Counsel

Advises and advocates for clients; develops applications and coordinates treatment planning.

District Attorney

Represents the prosecution, provides its position, and raises appropriate legal and public-safety considerations.

Behavioral Health Services

Assesses needs, recommends levels of care, and facilitates connections to services.

Probation / Providers

Provide applicable supervision, monitoring, treatment, reporting, and support within their roles.

One Case, Multiple Agency Responsibilities

Every stage involves different decision-makers and resources

- Defense: identify options, obtain records, file motions, attend progress hearings.
- DA: review applications, present positions and public-safety issues, assist with victim considerations.
- Court: schedule hearings, decide applications, monitor progress and outcomes.
- BHS, Probation, Sheriff, and providers: assess, coordinate, supervise where appropriate, deliver treatment and custody services.

Defense: Access To The Legal Process

Public Defender, Conflict Criminal Defender, and other counsel

- Review a client's case and advise on potential options
- Work with the client on whether to request diversion
- Coordinate, where appropriate, with assessment and treatment partners
- Submit and argue applications and remain involved in required hearings
- Support navigation of the process alongside other service partners

Behavioral Health: Connecting Needs To Services

A simplified version of the BHS workflow

1. Referral

Court partner requests assessment

2. Assessment

Clinical and service needs evaluated

3. Recommendation

Appropriate level of care identified

4. Linkage

Connect to providers after court decision

Probation and Treatment Partners

Implementation continues beyond the court order

- Applicable community supervision and compliance monitoring
- Coordinating reporting, testing, and court-related requirements
- Communicating progress or concerns to the Court
- Providing clinical treatment, supports, and connections to ongoing care
- Responding when participant needs or circumstances change

Probation Track A: Enhanced Field Supervision

A designated subset of MHD participants receives closer monitoring

- Track A serves higher-needs / higher-risk MHD participants when ordered
- Field supervision and weekly multidisciplinary team coordination
- Compliance monitoring, testing, and court-related updates
- Assistance with intermediate responses and restitution reporting

Not Every Diversion Case Follows One Route

Felony, misdemeanor, custody and competency issues differ

- Felony and misdemeanor cases may use different court calendars.
- Some referrals are made while a person remains in custody.
- Probation involvement depends on the Court's requirements and case type.
- People found Incompetent To Stand Trial (IST) have specific statutory exceptions and related treatment pathways.

Sacramento County: A Growing Program

The available data describe a substantial local program

1,890

Applications received |
FY 2025–26

997

Applications granted |
FY 2025–26

1,051

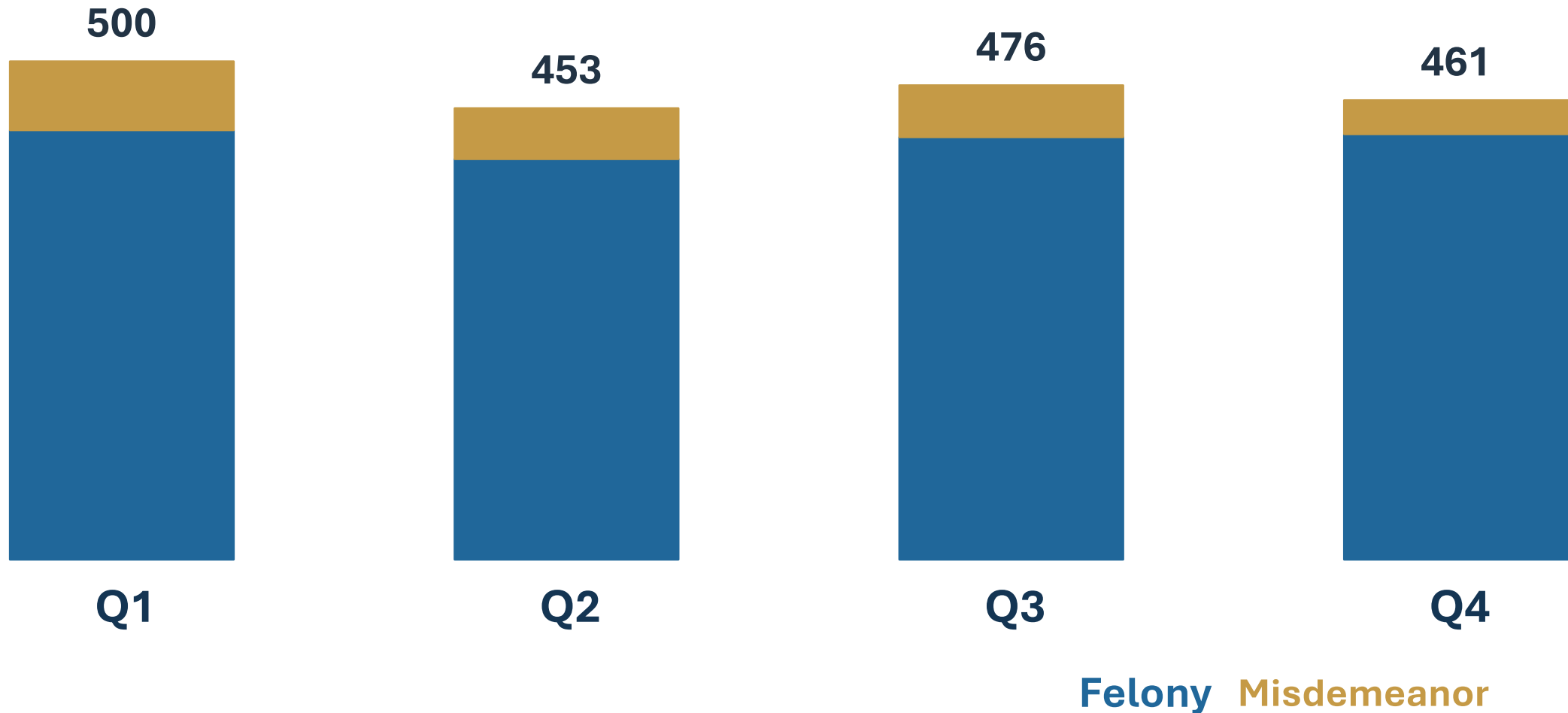
Active participants |
Q4 FY 2025–26

Counts reflect different reporting measures, not one cohort moving through a funnel.

Source: Sacramento Superior Court; FY 2025–26 AB 109 reporting

Application Volume By Quarter

New applications were predominantly felony cases



Outcomes: What Was Reported?

Cases that concluded during FY 2025–26

552

Successful completions

421

Unsuccessful completions

These are case exits recorded during the year; not the outcomes of the 1,890 applications filed that same year.

What The Data Tells Us - and What It Does Not

Reporting activity is not the same as evaluating impact

What we can describe

- Volume of applications and decisions
- Number of active participants
- Completions reported by the Court
- Reported AB 109 expenses

What remains to understand

- Long-term treatment engagement
- Subsequent justice-system involvement
- Variation in access or barriers
- Why people exit unsuccessfully
- Which resources drive outcomes

Mental Health Diversion And Jail Population

JPRP Strategy 4: Reduce appropriate time in custody

- January–June 2026 system ADP averaged 3,146, down 3.5% from the previous half-year.
- June 2026 jail system ADP was 2,962, the first below 3,000 since mid-2023.
- **September 2026 jail system ADP: 2,889**
- **September jail bookings: 2,616**
- Length of stay and timely release matter greatly.

Why Diversion Can Affect Custody Without Explaining ADP

An evaluation needs a credible causal question

- Timing: How long from referral to Court decision?
- Custody: How many days are spent incarcerated while an application is pending?
- Connection: How long from grant to actual treatment?
- Outcomes: Are jail days and participant stability improving over time?

Community Experience And Collaboration

Committee and public discussion

LET'S DISCUSS

What helps people succeed in diversion, and what barriers might make participation difficult?

What impacts on participants, families, victims, or communities should County agencies better understand?

Why Is This An AB 109 / CCP Conversation?

State law and locally funded activities are different

- MHD is a statewide pretrial legal pathway—not an AB 109 program.
- AB 109 funds specific DA and Public Defender MHD activities.
- Probation B1 funding supports collaborative courts, not MHD Track A.
- BHS, the Court, and other providers contribute without MHD B1 funding.
- CCP evaluates funded work; broader system data help explain context.
- The Criminal Justice Cabinet (CJC), the County's MHD Workgroup, and County Jail Population Reduction Plans (JPRP) address overlapping system issues.

FY 2025–26: AB 109 Category B1

Funded Activities Are Not The Full MHD System

\$6.83M

Total reported AB 109 B1 claims

AB 109 B1-funded agencies

District Attorney • Public Defender • Probation
(Collaborative Courts Only)

\$6.83M represents combined B1 claims—not the MHD total.
Separate DA/PD MHD activities from Probation collaborative-court spending in
evaluation.

What Is The CCP Evaluating?

One coordinated report • Distinct agency responsibilities

Funded work

- What was funded?
 - DA legal activities
 - PD representation and support
 - Probation's work in collaborative courts

System context

- What else influences outcomes?
 - Court decisions
 - BHS and provider capacity
 - Applications and completions

CCP / CCPAB

- What can we learn?
- Agency-specific performance
- Funding value and limits
- Future investment questions

Success Depends On What We Measure

Distinguish funded performance from broader outcomes

PD-funded work

Representation, petitions,
legal support

DA-funded work

Application review, hearings,
victim-related work

Collaborative courts

Probation-funded activities—
not Track A MHD

Court outcomes

Grants and completions
provide context

Treatment outcomes

BHS/provider measures—not
DA/PD accountability

Public benefit

Important to understand,
difficult to attribute

Separate Accountability, Shared Definitions

DA and PD need not agree on substantive case goals

- What funded positions and activities does each agency report?
- Which outputs and timelines are within each agency's control?
- Can both agencies use consistent counts and reporting periods?
- Which outcomes are judicial decisions or depend on unfunded partners?
- Where do agencies offer different interpretations of the same facts?

The BSCC Recidivism Measure

Why conventional measures do not fit neatly

- BSCC adult recidivism uses a new conviction following a conviction-based starting event
- Pretrial diversion does not necessarily have that starting event
- Completion dismisses the diverted charges; it is not a new conviction

Successful Completion and Restricted Records

Sealing and access matter for evaluation

- Satisfactory completion leads to dismissal of diverted charges
- Associated arrest records are subject to statutory relief and access restrictions
- Continued follow-up requires a lawful purpose, authorized access, and sound methods

What Can AB 109 Fairly Evaluate?

Direct funded performance first; system outcomes as context

- DA: funded review, appearances, and related activities.
- PD: funded representation, motions, hearings, and client support.
- Probation: collaborative-court work funded under B1—not MHD Track A.
- Court decisions, BHS services, and treatment outcomes: contextual, not agency scorecards.
- Long-term tracking requires data access and legal review.

MHD Outcomes Provide Context—Not Attribution

JPRP and system indicators help interpret funded work

- Activity: applications, decisions, and exits describe system scale.
Timeliness: assessment, filing, court, and service steps have different owners.
Treatment: BHS/provider engagement is essential context, not a B1 deliverable.
Custody: jail days and ADP reflect multiple causes, not DA/PD performance.
Use shared measures only with clear ownership and limitations.

One Report, Different Agency Objectives

Common definitions do not require identical legal goals

Shared reporting rules

- Dates and reporting periods
- Definitions and denominators
- Funding and staffing attribution
- Documented data limitations

Separate assessments

- PD-funded objectives and results
- DA-funded objectives and results
- Probation's work in collaborative courts
- System context—not joint scores

A Practical First-Year AB 109 Evaluation

A single report with distinct funded components

Shared context

- Statutory and local process
- System volumes and caveats
- Funding categories
- Legal and data limitations

Funded agency sections

- DA-funded activities and measures
- PD-funded activities and measures
- Probation's work in collaborative courts
- Outputs within agency control

Conclusions for CCP

- What funded resources deliver
- Where outside dependencies matter
- Gaps and follow-up needs
- Planning implications

Pause 5 | AB 109 Evaluation Priorities

Committee and public discussion

LET'S DISCUSS

What would you want to know to judge the value of AB 109-funded DA and Public Defender activities?

What broader system information would help put those investments in context?

Closing and Next Steps

Thank you for helping shape the questions

- Document community priorities for AB 109-funded functions
- Ask each funded agency to identify its activities, objectives, and feasible measures
- Report shared system indicators separately, with limitations and data owners
- Take cross-agency operational questions to appropriate criminal justice and social services partners