



CALIFORNIA  
HEALTH  
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## Policy Brief

# Embedding Mental Health Clinicians in Public Defender's Offices: A Potential CalAIM Strategy for Reducing the Mentally Ill Inmate Population in Jails

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### I. Executive Summary

California's implementation of the California Advancing and Innovating Medi-Cal (CalAIM) offers a new opportunity to redesign the state's Medi-Cal program. Improving medical and behavioral health outcomes for justice-involved individuals is a priority policy area for CalAIM.

As state and local policy makers develop CalAIM action plans for local justice-involved individuals, this policy brief suggests a potential innovative strategy that places mental health clinicians in public defender's offices. Several existing programs have demonstrated measurable benefits by reducing the number of days a client is incarcerated through an alternative placement in a community mental health treatment program. The embedded mental health clinicians offer prompt engagement to jail inmates charged primarily with felonies. The policy brief reviews practices in San Diego and Sacramento County public defender's offices. In both offices, embedded mental health clinicians meet with clients within roughly 24-48 hours of initial incarceration. Each program capitalizes on several key components:

- **Early intervention in jail** facilitated by the public defender office to rapidly link newly incarcerated individuals with mental health professionals.
- **Client-Attorney privileges to encourage rapport building** between mental health clinicians and clients.
- **Timely and relevant information accessible** through the county records.
- **Mental health education and advocacy** within a judicial setting.
- **Measurable and direct linkage** to appropriate treatment upon exiting jail.

In both counties, the program leverages the office of the public defender, an under-utilized, but trusted engagement point for justice-involved individuals. Typically, an inmates' time through county jail is brief, stressful, and lacking in efforts to effectively address underlying mental health and/or substance use disorders. Jail staff may be able to offer some medical screening to ensure an inmates' immediate needs are addressed in jail, but there is little time or capacity for establishing a reentry plan that can provide post-release treatment.

Both programs identified that many referred clients needed housing support at the time of their incarceration. The San Diego program estimates that among the 1,300 mental health referrals received in 2020-2021, roughly 85% experienced homelessness before their incarceration. The Sacramento program noticed a similar trend in 2020-2021 among the 1,800 referrals received and found that roughly 43% of referrals resulted in a need for linkage to housing support following their jail stay.<sup>1</sup> Each program anticipates that early assessment and intervention lead to shorter jail stays as clients were swiftly linked to appropriate outpatient services—a possible money saver for county jails. This intervention could be an avenue to reduce a client's length of stay in jail and increase their likelihood of engagement in outpatient services by capitalizing on time spent in custody. The following provides a descriptive overview of both public defender's offices use of mental health clinicians. The initial review suggests most inmates referred to these programs and benefit are clients charged with felonies and experiencing homelessness, psychiatric instability and substance use disorders before entry to jail. Further investigation is warranted to determine efficacy of this approach for the criminal justice population.

## **II. Background**

Public defenders are uniquely positioned to assist and advocate for a client's needs because clients often develop trust and rapport with their attorneys. While clients are incarcerated, public defenders are also among the first non-jail staff to see inmates, thus creating an opportunity for timely intervention and establishment of rapport. Trust is important, given that many justice-involved individuals have complex needs and can be distrustful of government and justice system professionals because of past experiences of trauma, mental illness, homelessness, substance abuse, and systemic racism.

Given these complex needs, some public defender's offices have turned to a holistic defense approach. Holistic defense links clients to collaborative or diversion courts by using social service providers. Some outcomes of holistic defense include reduction in recidivism, resolves cases quicker and releases clients from jails faster. Holistic defense programs began in the Bronx Public Defender's Office nearly 10 years ago. A 2019 Rand Corporation evaluation of the program concluded that holistic defense reduces incarceration without harming public safety. It also reduces the expected sentence time by 24%. The Bronx

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<sup>1</sup> The above estimates described are gleaned from key informant interviews from each Public Defender's Office. See "Current Status" for more information on each programs' internal analysis of their respective programs.

Defender's program estimates they saved their clients 1.1 million days in custody over 10 years after applying a holistic defense approach.<sup>2</sup>

California Supreme Court's *Humphrey Decision*, which held that detaining a person pretrial solely because they cannot afford bail violates due process and equal protection, also creates an opportunity for holistic defense.<sup>3</sup> Some courts and attorneys interpret the *Humphrey Decision* to mean that courts must identify the least restrictive way to monitor individuals between arraignment and trial.<sup>4</sup> Public defenders are uniquely positioned to uphold this California Supreme Court decision by advocating for the safe and timely release of their clients. Integration of public defenders and mental health clinicians allows attorneys to work on addressing client's short-term needs for release from custody, while social service staff can work towards long-term needs such as improving quality of life. Offering intervention while clients are in jail via public defender's offices capitalizes on timely intervention and the inherent trust established through the client-attorney relationship.

California is working to develop programs that allow for more integration between helping professions to address individuals in the criminal justice system who have complex needs. CalAIM includes a broad array of policy changes to focus and coordinate services for individuals who are the most medically vulnerable and complex. Beginning on January 1, 2023, low-income Medi-Cal eligible justice-involved individuals who are released from custody and who experience homelessness, serious mental illness (SMI), substance use disorders (SUD), or co-morbidities will be eligible for an array of benefits and services. This includes Enhanced Care Management and Community Supports that address underlying social determinants of health such as housing. Medi-Cal managed care plans (MCPs) will receive funding through the Department of Health Care Services (DHCS) and will be responsible for administering key elements of the CalAIM program. (For more information about CalAIM, see [Policy Implementation Guide for Justice-Involved Adults and Youth](#))

CalAIM also proposes to provide funding for medical and behavioral health assessment, evaluation, and pre-release planning for incarcerated inmates ninety days prior to their release. If the state's federal waiver request is approved, California would be among the first states to offer pre-release services through the Medicaid program. If adopted, it may also a sustainable funding strategy that could pay for the embedded mental health clinicians.

As the state considers program models, there is broad recognition of the logistical and administrative challenges relating to implementing pre-release service for inmates. A study of California jail population found that nearly 30 percent of inmates were admitted and released on the same day, while another 45 percent spent less than two weeks in

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<sup>2</sup> For more information on holistic defense, see [here](#).

<sup>3</sup> For more information on the *Humphrey Decision*, see [here](#).

<sup>4</sup> Specifically, the Sacramento Public Defender's Office cites this decision as an argument point to help clients be released from jail sooner.

custody.<sup>5</sup> These quick jail stays create a tight window during which interventions can be offered. Given the tight turnaround of inmates in jail, timely behavioral health intervention is necessary to assist clients with complex care and treatment needs.

Embedding mental health professionals in public defender’s offices could serve as a pathway for speedy intervention. In addition, public defender offices have unique and privileged access to jail incarcerated individuals. Clients are likely to appreciate that their attorney is there to help them. Therefore, trust between the client and their public defender can more quickly achieved. Public defenders can more easily access privileged information, such as medical records, psychiatric history and experiences of homelessness. This trust can easily extend to include a mental health professional who is part of the public defender’s team. Below describes how San Diego and Sacramento have created two distinct models that embed mental health professionals into their public defender offices.

### Overview of Public Defender’s Offices Embedding Mental Health Clinicians

	San Diego County	Sacramento County
<b>Overview</b>	<ul style="list-style-type: none"> <li>• Defense Transition Unit (DTU)</li> <li>• Client-attorney-clinician privilege</li> <li>• MOU with county behavioral health for access to records</li> <li>• Clinicians provide education in court about social services available to inmates for more speedy releases</li> <li>• Any attorney requests clinician support for brief or full assessment</li> </ul>	<ul style="list-style-type: none"> <li>• Pretrial Support Program (PTSP)</li> <li>• Gather Release of Information (ROIs) to coordinate care and advocate for timely release</li> <li>• Access to Homeless Management Information System for more seamless linkage to appropriate housing support</li> <li>• Law students visit inmates first and refer to social services, if needed. Social work students do brief assessments, followed by licensed social worker full assessment if needed</li> </ul>
<b>Current Status &amp; Outcomes</b>	<ul style="list-style-type: none"> <li>• Current: 7 licensed clinicians, 3 housing navigators and 7 substance use navigators</li> <li>• 2016-2021= 5,800 assessments</li> <li>• 2021=1,300 individuals assessed</li> </ul>	<ul style="list-style-type: none"> <li>• Current: 6 licensed social workers, 14 social work students, 4 law students and 1 legal secretary</li> <li>• 2021=1,800 assessments</li> </ul>
<b>Funding &amp; Budgetary Innovation</b>	<ul style="list-style-type: none"> <li>• County Mental Health Service Act Funds</li> </ul>	<ul style="list-style-type: none"> <li>• Federal Bureau of Justice Assistance (grant?)</li> <li>• State Judicial Council (grant?)</li> <li>• County General Funds</li> </ul>

<sup>5</sup> For more information on the California Jail population, see [here](#).

## **A. San Diego County Public Defender's Office: Defense Transition Unit.**

*Overview.* The San Diego Public Defender's Office formed the Defense Transition Unit (DTU) in October of 2016. DTU utilizes licensed clinicians to assess the mental health treatment needs of criminally accused clients and links these individuals directly to social services. DTU mental health clinicians see clients while in custody to help expediate linkage to appropriate care. Already, DTU has earned several impressive awards for this program from the Public Defender Association's, the Christine West Award from the Forensic Mental Health Association of California, the National Association of Counties and the California State Association of Counties.<sup>6</sup>

DTU is positioned so that when a public defender recognizes a client who may have a mental health need, they can reach out to a fully embedded mental health clinician in their office. Attorneys simply send an electronic "Action Request" to DTU immediately for assessment. Upon receipt of the "Action Request," these clinicians complete "brief service" assessments within 24 hours, or "full service" assessment within 5 working days while the client is incarcerated.

DTU clinicians are aided in their assessments through two unique factors: client-attorney privilege and access to county mental health records. Since clinicians are fully embedded in the Public Defender's Office, they can operate under the umbrella of client-attorney privilege, which can help build trust and rapport with clients. For example, a client may be fearful to share about their drug use or experience of being homeless with a traditional clinician because they fear this information will be detrimental in their criminal case. This added layer of protection can assist client's in being honest with the clinician about their social circumstances and needs because the clinician is not legally mandated to report this information to any entity. DTU also sought county counsel for guidance on this topic, thus solidifying this practice.<sup>7</sup>

Additionally, DTU accesses the client's behavioral health history through a Memorandum of Understanding (MOU) with the county Behavioral Health Service (BHS), which allows for prompt and accurate review of diagnosis, medication and treatment history. DTU clinicians synthesize these records and complete in-person assessments in-custody to develop treatment plan recommendations to the court.

*Current Status.* Between fall of 2016 and spring of 2021, DTU processed roughly 5,840 referrals related to a client's mental health needs while clients were in custody.<sup>8</sup> Among the referrals for mental health needs, roughly 1,339 were for brief assessments and 4,501 for Full-Service assessments. Currently, DTU employs seven licensed clinicians who work with

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<sup>6</sup> See the following links for award information: [Public Defender's Association, Christine West Award](#), [National Association of Counties](#), and [California State Association of Counties](#).

<sup>7</sup> See [EC 952- Attorney Client Privilege](#) and [Elijah W.- 216 Call. App 140 \(2013\)](#) for further explanation of how DTU clinicians can maintain client's confidentiality under client-attorney privilege, and how DTU clinicians are able to further protect client's confidentiality on aspects of mandated reporting.

<sup>8</sup> The following descriptive statistics are estimates gathered from DTU staff via key informant interviews during March of 2021 through March of 2022.

three housing navigators and seven substance use counselors to aid clients with problems related to SMI, Substance Use Disorder (SUD) and/or homelessness.

The prevalence of homelessness among the identified justice-involved population is a key finding of the program. During 2020-2021, DTU processed about 1,300 mental health referrals, which most, about 1,000, result in full-service assessment and linkage. DTU staff estimate that roughly 85% of these referred individuals experience homelessness before and/or after their jail stay. Of the full-service mental health referrals, approximately 30% will qualify for Assertive Community Treatment (ACT) level of care according to county criteria, which is the highest level of county outpatient specialty mental health care. ACT services address homelessness by offering wrap-around services, which typically includes street-level psychiatric medication support (e.g. deliver medication to clients and/or provide injectable anti-psychotics), a minimum of weekly in person visits with clients, individually tailored transportation plans and in some programs immediate linkage to funds to pay for housing. Another interesting finding from the DTU is they process several referrals for linkage to substance abuse services. In addition to the roughly 1,300 mental health referrals, DTU estimates processing about 2,500 additional referrals annually for linkage to substance abuse services

The DTU clinicians regularly appear in court to answer the court's specific questions about treatment plans and available services. The clinicians serve as an educational function for the court in terms of basic levels of care, eligibility criteria, and the parallel system of civil commitments. Specifically, the clinicians provide real-life explanations about why a client may or may not qualify for a community-based service, inpatient treatment or residential treatment option. Furthermore, these clinicians interact with more than specialty courts, such as Behavioral Health or Drug Court. The clinicians estimate that less than 5% of their time is spent in specialty courts, meaning the majority of their time is spent serving the larger incarcerated general population with mental health needs.

*Funding and Budgetary Innovation.* DTU is funded through county Mental Health Service Act (MHSA) funds. Funds are issued through the Community Services and Supports section of MHSA funds. In 2018, DTU completed their own internal analysis to estimate jail cost-savings for implementing the program. DTU sampled incarcerated mentally ill inmates at the highest level of treatment and found that these inmates spent an average of 159 days in custody, costing a jail about \$22,000 annually per inmate. DTU placed 36 of these high-level inmates in community treatment. If at least half stay in treatment (18 clients), DTU estimates first year jail savings at roughly \$400,000. This is tremendous savings given that DTU process far more referrals annually (closer to 1,300 unique individuals).<sup>9</sup> In FY 2016, San Diego County allocated \$174,354 to include two licensed mental health clinicians to provide pre-release planning, care coordination, and short-term case management.<sup>10</sup> According to the MHSA Three Year Program for FY 2020-2023, San Diego County plans to

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<sup>9</sup> Find more information about DTU internal cost analysis [here](#).

<sup>10</sup> [County of San Diego MHSA Fiscal Year 2016-17 Annual Update](#).

spend almost a quarter million dollars annually to continue to fund this program through the Public Defender's Office (\$240,000).<sup>11</sup>

## **B. Sacramento County Public Defender's Office: Pretrial Support Program**

*Overview.* The Sacramento County Public Defender's Office formed the Pretrial Support Program (PTSP) in Fall of 2019. PTSP utilizes social workers to assess client's needs immediately upon incarceration. Specifically, they use law students to determine if a client needs intervention, and the social work students to assess clients within 24-hours of booking. Sacramento County Public Defender's Office was awarded a Health and Human Services Merit Award from the California State Association of Counties for their Pretrial Support Project.<sup>12</sup>

PTSP practices holistic defense by screening clients which have been designated to specialized housing units in the jail, which indicate higher need. Clients are evaluated within 24 hours of booking by students. The PTSP team also asks clients to sign Releases of Information (ROI) in order for attorneys to subpoena important medical and behavioral health records. Then, attorneys are better positioned to advocate for a client's individual needs while in jail.

Evidenced-based screening tools are utilized to identify client's needs, some include— Substance Use Disorder Assessments, Jail Brief Mental Health Screening, and the Public Safety Assessment (predicts likelihood of returning to court and/or committing a crime upon release).<sup>13</sup> After an evaluation, clients are either 1) released because they are identified as safe to enter the community, 2) followed-up by a licensed social worker while in custody for linkage to outside care, and/or 3) recommended for a diversion court (i.e. Mental Health Court, Drug Court, Veterans Court, etc).

PTSP is also positioned to help inmates experiencing homelessness access housing upon release. PTSP has access to the Homeless Management Information System (HMIS) from the county, which helps identify a client's recent experience of homelessness and influences the county's priority list for who gets housing first. On the front end, this is important because it allows attorneys to provide immediate information to the court about a client's housing circumstances before becoming incarcerated to help advocate for timely release. On the back end for release, since the PTSP has access to this information, they can seamlessly refer to the appropriate homeless service provider. Many county based social services require a specific amount of time, episodes or experience of homelessness (e.g. age, medical status, shelter versus unsheltered, etc) to qualify for certain housing services and prioritize certain populations. As a result of PTSP having access to HMIS, clients may

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<sup>11</sup> [County of San Diego Health and Human Services Agency: MHSA Three Year Program and Expenditure Plan for Fiscal Years 2020-21 through 2022-23.](#)

<sup>12</sup> Find more information about PTSP and the award [here](#).

<sup>13</sup> More information on each assessment can be found in in the following links—Substance Abuse Assessment: [CAGE Assessment](#), [Jail Brief Mental Health Screening](#), and [Public Safety Assessment](#).



become eligible sooner for housing support at release, versus waiting to be assessed by the county at a later date.

*Current Status.* Currently, PTSP employs six full-time social workers and roughly 14 social work students.<sup>14</sup> From January 2021-2022, PTSP estimates completing 1,800 assessments. These assessments resulted in roughly 900 warm hand-offs to community mental health services (462), substance abuse services (243) and housing services (252). Although most of the assessment and intervention occurs while in jail, PTSP ensures direct linkage to outside service providers. PTSP provides door to door linkage by offering transportation via Uber and bus passes, as well as assistance tailored to the client's level of need to ensure the client gets to a program upon release (e.g. brief mental health intervention, clothing, cell phones, IDs, etc). PTSP estimates most clients need linkage to mental health services (51%), followed by housing (46%), then others need substance use services (43%), medical assistance (3%) and employment services (9%). PTSP estimates that nearly half (41%) are released from custody after gathering information from the needs assessment, thus drastically reducing their days in jail. PTSP staff believe the above intervention saves the jail money, and helps clients access services they desperately need by reducing inmates days in custody.

*Funding and Budgetary Innovation.* Initial funding for the program came from a Federal Bureau of Justice Assistance grant in partnership with the county behavioral health (\$250,000) department, and a grant to the Sacramento Superior Court (\$392,858) from the State Judicial Council. Both funding sources expire at the end of 2022. In addition, PTSP received \$644,901 from the county general fund.

### **III. Conclusion**

Embedding mental health clinicians into public defender's offices utilizes several of the key program elements that create the building blocks for success and fiscal sustainability. The two programs described in this policy brief offer rapid assessment and intervention while clients are still in custody. This engagement opportunity can occur when clients may be more receptive to receiving support. The embedment of a mental health clinician in a public defender's office can help facilitate a more seamless approach to case management and care coordination. Beginning the assessment and intervention process while clients are still incarcerated can be an effective practice for linking clients with community treatment and other services.

As part of the state's CalAIM's proposal for justice-involved individuals, federal approval is being requested to access federal Medicaid matching funds for care coordination services provided in a jail 90 days prior to release. Reimbursement would be provided for conducting initial care needs assessments, developing transition plans for community-based care, appointments following release, and developing a medication management plan. It could also pay for a 30 days' supply of medication upon release. If this component

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<sup>14</sup> The following descriptive statistics are estimates gathered from PTSP staff via key informant interviews during March -April of 2022.



of CalAIM is approved by the federal government, funding for these services would be available on a fee-for-service basis, thereby providing an on-going funding source to support embedded mental health clinicians in public defender's offices.

Embedding mental health clinicians in public defender's offices offers unique advantages that leverage a public defender's attorney-client privilege, access to clients in jail, ability to obtain ROI's, and client trust. The initial review of each program suggests some of the most clinically complex inmates benefit from early intervention offered by mental health clinicians in a public defender's office—inmates facing felony charges, homelessness, psychiatric instability and substance use. These previously disconnected inmates are paired with long-term care to reduce their days in jail and increase their access to care in the community. Implementing a program like this may also result in cost-savings for the jail by reducing the number of days a client is in custody. Further research and evaluation are warranted to explore the effectiveness, cost-savings and long-term outcomes of this innovative practice. The initial review indicates that embedding mental health clinicians into Public Defender's Offices is a promising practice.

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