

Diversion programs work: Shouldn't there be more?

By Lara Yeretsian

The criminal justice system has been tortoise-like slow in recognizing the benefits of diversion programs for defendants suffering from mental health, PTSD, drug dependency and other treatable conditions, and such programs remain scarce and sometimes impossible to access. Despite well-documented positive outcomes of these alternatives to incarceration, not all deserving defendants make it into these programs.

It doesn't make sense. People dealing with issues such as mental illness and addiction don't deserve to be penalized; they deserve a second chance. Instead of being warehoused, they should be learning life skills and contributing to society. We're moving in the right direction as a society, but we could do so

much more.

A recent client is one of the lucky few. Recently, she was accepted into the Conviction and Sentence Alternatives (CASA) program, a federal alternative to incarceration for the Central District of California. In exchange for getting her life back, she pled guilty to a count of drug possession for sale, a charge that will be dismissed when she completes the program. She'll be free to pursue her new dream of attending law school — a dream inspired by her positive experience in the criminal justice system. At 23, she's too young and too smart to be written off. Fortunately for her, the insightful members of the CASA committee recognized this as well.

The great news is that programs like CASA make a difference. On her first day in the program, my client met with a collaborative team that included a federal judge, a pro-

secutor, a probation officer, and a deputy public defender; she learned healthy eating tips from a recovered drug offender; and she discovered that she matters. In the end, she'll not only go straight; she'll change others' lives. The bad news is that she is only my second client to enter the CASA program. My first, an older gentleman, has remained on the straight and narrow. But these two are rarities — not because of how things ended, but because of how they started. "What you got by entering this program is a miracle," the federal judge told my client, "It's like being struck by lightning."

CASA is just one of many programs that really do change lives, and new programs are being added to the mix as I write this. Unfortunately, fewer than 500 defendants have been admitted to CASA since its inception in 2012. The bottom line is that alternative-to-incarcera-

tion programs aren't even scratching the surface of the eligible defendant pool — mostly first-time offenders, non-violent criminals, and others whose crimes result from or are connected to treatable conditions.

California state courts offer a va-

er, the chances of actually getting into a diversion program is remote. Despite the clear legislative intent of these laws, the state has failed to commit sufficient resources to make diversion a meaningful option for most defendants.

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riety of pretrial diversion programs for defendants. Drug diversion programs are offered under Penal Code Section 1000 and Proposition 36. Last year, Section 1001.36 was added to the Penal Code to provide a path to diversion for mentally ill defendants. Pretrial diversion is also available to veterans. For the non-military mentally ill howev-

er, according to Federal Alternative-to-Incarceration Court Programs, a comprehensive report by the United States Sentencing Commission, the majority of studies from 2000 to 2014 reviewed by Professors Edward Latessa and Angela Reiter showed that adult drug courts were effective in reducing recidivism rates, though with varying degrees

of effectiveness. Other research suggested that mental health court participants had lower rates of recidivism than mentally ill individuals processed through traditional modes of criminal adjudication. They were less likely to be arrested and spent fewer days incarcerated during a one and one-half year follow-up period compared to similarly situated individuals sentenced to jail.

Alternatives to incarceration have been in place for decades at the state level but only recently appeared on the federal landscape. The model involves a "collegial" rather than an "adversarial" judicial process, whereby a "team" of judges, prosecutors, defense attorneys, probation or pretrial services officers, treatment providers, and others work together on a regular basis with defendants to reverse the cycle.

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Criminal diversion works, but is under utilized

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defendants to reverse the cycle. CASA's mission statement, for example, calls it "a collaborative criminal justice program that promotes public safety and reduces the risk of recidivism by providing rehabilitative services and life skills training to its participants.... in a structured and supportive court environment."

Before 2013, federal sentencing guidelines and other factors limited the scope of federal diversion programs, but in that year Attorney General Eric Holder launched the Smart on Crime Initiative, endorsing alternative-to-incarceration programs as part of a larger, national sentencing reform initiative: "In appropriate instances involving non-violent offenses, [federal] prosecutors ought to consider alternatives to incarceration, such as drug courts, specialty courts, or other

diversion programs."

Holder specifically pointed to CASA as a model for the entire federal court system. The program includes two tracks, one of which results in a reduced sentence with no imprisonment and the other of which results in dismissal of the charge. Defendants are released on bond with intensive supervision that includes attending weekly or bi-weekly group meetings with the judge and other members of the team, as well as participating in community programs such as substance abuse or mental health treatment, employment or educational programs, and restorative justice programs (such as paying restitution and performing community service).

Given the success of diversion programs, we should be questioning why so few defendants gain ac-

cess and why more such programs aren't in place. Entry into a diversion program should not be like being struck by lightning. Given the sheer number of eligible criminal defendants, these programs should be expanded and should provide multiple points of review — prosecutors, judges, pretrial officers, defense counsel — to ensure that consideration is given to the potential benefits of diversion for every appropriate defendant.

It really is a new day for criminal defendants. We have finally embraced a rehabilitative model that can help a large segment of people caught in the criminal justice system and moved away from a strictly punitive approach to justice. Now it's time to make alternatives to incarceration a real option for a wide swath of criminal defendants: Open and expand diversion programs —

at both the federal and state levels — so that they truly change both individual and societal outcomes. ■

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