
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 532 **Hearing Date:** July 11, 2017
Author: Waldron
Version: May 26, 2017
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Drug Courts: Drug and Alcohol Assistance*

HISTORY

Source: Author

Prior Legislation: AB 301 (Butler), 2011, vetoed
AB 1925 (Salas), 2010, vetoed
AB 851 (Steinberg), 2007, vetoed

Support: California Consortium of Addiction Programs and Professionals; County Behavioral Health Directors Association of California; National Association of Social Workers, California Chapter; Pacific Reentry Career Services

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to authorize a court to develop a program to offer mental health and addiction treatment services, as defined, to women charged with specified non-felony complaints and sunsets the provisions of this bill on January 1, 2020.

Existing law vests in the superior courts the judicial power of California. (Cal. Const. art. VI, § 1.)

Existing law establishes the Judicial Council and authorizes them to make rules and recommendations regarding the operation of the courts. (Cal. Const. art. VI, § 6(d).)

Existing law allows courts to make rules for the administration of the courts so long as they are not otherwise prohibited by the Constitution, statute or rules adopted by the Judicial Council. (Gov. Code, § 68070.)

Existing law required the Department of Corrections to establish and implement a community treatment program under which women inmates sentenced to state prison, as specified, who have one or more children under the age of six years shall be eligible to participate in the program. (Pen. Code, § 3411.)

Existing law specifies that the community treatment program shall provide for the release of the mother and child or children to a public or private facility in the community suitable to the needs of the mother and child or children, and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

Existing law created the Pregnant and Parenting Women’s Alternative Sentencing Program Act, an alternative sentencing program for pregnant women or women with children under six years of age who have a well-established history of substance abuse and meet other specified criteria. (Pen. Code, §§ 1174-1174.9.)

Existing law authorizes a trial court to "defer entry of judgment" for eligible drug offenders, provided the offender pleads guilty and completes an approved drug program, as specified. (Pen. Code § 1000.)

Existing law authorizes a "preguilty plea" diversion for eligible drug offenders. Diversion programs are available in a county where the court, the prosecutor and the public defender to use such a process. In true diversion the underlying charges are dismissed if the defendant completes the diversion program. Should the defendant fail on diversion, the criminal charges will be reinstated. (Pen. Code § 1000.5.)

Existing law requires non-violent drug possession offenders and parolees to receive drug treatment instead of incarceration. Eligible parolees receive community-based treatment for a non-violent drug possession violation of parole. (Pen. Code §§ 1210.1 and 3063.1.)

This bill permits a court, until January 1, 2020, to develop a program to offer mental health and addiction treatment services to women who are charged in a complaint that consists only of misdemeanor offenses or who are on probation for one or more misdemeanor offenses. Prohibits this bill from applying to women who are charged with a felony or are under supervision for any felony conviction.

This bill defines “mental health and addiction treatment services” as evidence-based treatment and recovery wraparound support services that include, but are not limited to:

- 1) Mental health and substance abuse treatment, including addiction counseling, inpatient detoxification, case management, daily living skills, and medication-assisted treatment (MAT) or any other federally approved medication;
- 2) Vocational services;
- 3) Housing assistance;
- 4) Community support services;
- 5) Care coordination;
- 6) Transportation assistance; and,
- 7) Mental health and substance abuse assessments.

This bill provides a sunset date of January 1, 2020.

COMMENTS

1. Need for This Bill

According to the author:

Women in county jails face unique challenges. More often than not, they have young children whose lives become disrupted. Documentaries have shown that once women enter the "system" they tend to continue to commit offenses. AB 532 is my attempt to help break the vicious cycle of recidivism by authorizing county courts to develop and implement addiction, mental health treatment, and other services for females that have been charged with a misdemeanor. Women who are provided with these services will be able to focus on improving their lives and getting on the straight and narrow. Many of these offenders have hit rock bottom and it is our duty as a state to help rehabilitate them by offering them the services that they need. The goal of AB 532 is to help those who have made mistakes turn their life around by providing them with rehabilitation services at the first point of contact, rather than allowing them to simply become another statistic.

2. Mental Health Courts

Mental health courts are a type of problem solving court that combine judicial supervision with community mental health treatment and other support services in order to reduce criminal activity and improve the quality of life of participants. Mental health courts are established to make more effective use of limited criminal justice and mental health resources, to connect individuals to treatment and other social services in the community, to improve outcomes for offenders with mental illness in the criminal justice system, to respond to public safety concerns, and to address jail overcrowding and the disproportionate number of people with mental illness in the criminal justice system. (<http://www.courts.ca.gov/5982.htm>)

Mental health courts tend to share the following elements:

- a) Participation in a mental health court is voluntary. The defendant must consent to participation before being placed in the program;
- b) Each jurisdiction accepts only persons with demonstrable mental illnesses to which their involvement in the criminal justice system can be attributed;
- c) The key objective of a mental health court is to either prevent the jailing of offenders with mental illness by diverting them to appropriate community services or to significantly reduce time spent incarcerated;
- d) Public safety is a high priority, and offenders with mental illness are carefully screened for appropriate inclusion in the program;

- e) Early intervention is essential, with screening and referral occurring as soon as possible after arrest;
- f) A multidisciplinary team approach is used, with the involvement of justice system representatives, mental health providers, and other support systems;
- g) Intensive case management includes supervision of participants, with a focus on accountability and monitoring of each participant's performance; and
- h) The judge oversees the treatment and supervision process and facilitates collaboration among mental health court team members. (<http://www.courts.ca.gov/5982.htm>)

3. Drug Courts

Drug Courts are specially designed court calendars that provide an alternative to traditional criminal justice prosecution for non-violent drug-related offenses. These courts combine close judicial oversight and monitoring with probation supervision and substance abuse treatment services. (www.courts.ca.gov/5979.htm)

The goals of these programs are to:

- a) Reduce recidivism and substance abuse among substance abusing offenders; and
- b) Increase the offender's likelihood of successful rehabilitation.

Adult drug courts provide access to treatment for substance-abusing offenders in criminal, dependency, and family courts while minimizing the use of incarceration. They provide a structure for linking supervision and treatment with ongoing judicial oversight and team management. The majority of drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. (*Id.*)

4. Equal Protection

This bill allows courts to set up a program that is designed to provide mental health and addiction treatment services to *women* charged with misdemeanors or with a prior misdemeanor conviction. This bill does not make allowances for the establishment of a similar program for *men* charged with a misdemeanor or with a prior misdemeanor conviction.

The Equal Protection Clause of the Fourteenth Amendment, Section 1, commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The [Equal Protection Clause](#) generally requires the government to treat similarly situated people alike. *City of Cleburne v. Cleburne Living Ctr., Inc.*, [473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 \(1985\)](#). Dissimilar treatment of dissimilarly situated persons does not violate equal protection. See *Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp.*, [21 F.3d 237, 242 \(8th Cir. 1994\)](#).

While discrimination on the basis of race or national origin is subject to "strict scrutiny," classifications based on economic factors or non-suspect classifications are subject to the rational basis standard of review. (*Faulkner v. Jones*, F.3d, No. 93-2030, slip op. at 7)

(4th Cir. Nov. 17, 1993.) On the other hand, sex-based classifications, even in the context of unequal prison conditions, are given "intermediate" scrutiny. (*Id.*; *Bukhari v. Hutto*, [487 F. Supp. 1162, 1171 \(E.D. Va. 1980\)](#).) "To withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective." (*Id.*, citing *Clark v. Jeter* (1988), [486 U.S. 456, 461](#); *Mississippi Univ. for Women v. Hogan* (1982), [458 U.S. 718, 724](#).) "Legislative distinctions based on gender may thus be justified by an important governmental interest in recognizing demonstrated differences between males and females. But intermediate scrutiny will reject regulations based on stereotypical and generalized conceptions about the differences between males and females." (*West v. Virginia Dep't of Corrections* (1994) 847 F.Supp.2d 402, 405.)

If a court was to find that men and women dealing with mental health and substance abuse issues in the criminal justice system are "similarly situated" for purposes of evaluating an equal protection claim, the court would apply intermediate scrutiny. Such scrutiny would require a finding that allowing a court to establish a treatment program only for women was "substantially related to an important governmental objective" in order to find that the program satisfies constitutional requirements.

5. Women and Substance Abuse

The analysis of the Assembly Public Health Committee, included information from the National Institute of Drug Abuse which identified differences between men and women dealing with substance abuse. The National Institute of Drug Abuse states that gender-related drug abuse treatment should attend not only to biological differences but also to social and environmental factors, all of which can influence the motivations for drug use, the reasons for seeking treatment, the types of environments where treatment is obtained, the treatments that are most effective, and the consequences of not receiving treatment. Many life circumstances predominate in women as a group, which may require a specialized treatment approach. For example, research has shown that physical and sexual trauma followed by post-traumatic stress disorder is more common in drug-abusing women than in men seeking treatment. Other factors unique to women that can influence the treatment process include issues around how they come into treatment (as women are more likely than men to seek the assistance of a general or mental health practitioner), financial independence, and pregnancy and child care.

Such distinctions between men and women relative to substance abuse could potentially support the establishment of a substance abuse/mental health program which is only available to women, should an equal protection challenge arise.