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## Principles: Mental Health Courts

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### **Background**

Disability Rights California promotes public policies that maximize alternatives to incarceration and protect civil liberties of people with mental health disabilities, including co-occurring disabilities, e.g., developmental and mental health disabilities. Mental health courts focus on treatment to restore health and reduce criminal activity by providing better access to treatment, consistent supervision, and support to reconnect with families. We support alternatives to incarceration for individuals who, because of the nature of their disabilities, choose to be diverted from the criminal justice system. We support diversion programs that take place at the earliest stages of the criminal process as long as they are voluntary and meet the principles below.

### **Principles**

1. **Voluntary Participation and Informed Consent:** Mental health courts must be voluntary and based on the expressed interest and consent of the individual. This includes informed consent prior to participation that discusses all available options and outcomes, both legally and medically.
2. **The Right to Withdraw:** The individual must be able to withdraw from participation at any time. There should be no penalty for withdrawal other than returning to the criminal justice system for the underlying alleged crime.

3. **Expungement of Crime upon Successful Completion:** The crime must be expunged upon successful completion of the mental health court-ordered program.
4. **Conviction or Guilty Plea Not Required:** Mental health courts must not require a conviction or a guilty plea to participate, instead they should follow a pre-plea diversion model. This model most respects the individual's civil rights and maximizes the success of diversion programs. To require conviction or guilty plea may jeopardize future employment and housing options and further criminalize mental health disabilities.
5. **Substantial Jail or Prison Time:** Mental health courts should focus on diverting people charged with crimes that have substantial jail or prison time and who are less likely to be candidates for other types of diversion programs. Since mental health courts can leverage access to needed community services, they can inadvertently create incentives to arrest people for minor infractions to get them into services. Because of this, mental health courts should be used with caution and only when people face significant jail or prison sentences.
6. **Duration No Longer than Underlying Period of Incarceration, Probation and Parole:** Mental health courts must offer treatment programs of a duration no longer than the sentence for the alleged crime, including incarceration, probation, parole time and must provide credit for time served. This ensures participation does not impose any penalty greater than incarceration.
7. **Right to Choose or Refuse Medication without Having to Withdraw from the Program:** Mental health courts must allow an individual to take medications that treat his or her symptoms and not unreasonably withhold medications the individual believes are more effective. In addition, mental health courts must allow the person to refuse medication if the individual has capacity to refuse, pursuant to the court decision in *Riese v. St. Mary's Hospital & Medical Center*, 259 Cal. Rpt. 669 (Cal. Ct. App. 1989). Medication does not work for all individuals and there are serious side-effects to many medications that can have long-standing or permanent effects.
8. **Mental Health Court Program Should Be Tied to Comprehensive Coordinated Services that Include Individual Participation:** Mental health courts must involve the individual in designing the court treatment plan, and the treatment plan must be client-centered.

Mental health courts should link individuals to comprehensive and coordinated mental health services. Comprehensive services include but are not limited to: self-help, housing, supportive education, supportive employment, mental and physical healthcare, case management, medication, substance abuse treatment, and transition services.

9. **Confidentiality and Privacy In and Out of Courtroom:** Mental health courts must protect confidentiality and privacy rights of individuals and proactively inform them about those rights.
10. **Data Collection:** Mental health courts should collect data on their effectiveness to measure outcomes and ensure their use is evidence-based, without impinging on individual privacy rights by providing information that would make it possible to easily identify individuals receiving treatment.
11. **Minimum Standards:** Mental health court minimum standards should focus on providing offenders access to treatment, consistent supervision by staff, and support to reconnect with their families if that is the wish of the individual receiving treatment.