



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

Improving Justice System Responses to Individuals with Mental Illness

Fair and Just Prosecution (FJP) brings together recently elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" briefs provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.

SUMMARY

This FJP "Issues at a Glance" brief addresses strategies for reforming justice system responses to individuals with mental illness. This brief highlights key principles and important considerations for improving law enforcement approaches to individuals experiencing a mental health crisis, as well as strengthening mental health diversion programs and reentry initiatives.

Individuals with mental illness are vastly overrepresented at every stage of the criminal justice system. Over half of individuals in the justice system have mental health needs, and as a result, jails and prisons have become the largest mental health treatment facilities in the country.² In response, many law enforcement leaders and justice system stakeholders are working collaboratively with public health officials to develop cross-system solutions to the justice system's mental health crisis.³ Elected prosecutors have a critical role to play as system leaders capable of bringing all the key partners to the table to implement high-impact reforms. DAs also have the authority and discretion to implement useful policies and programs within their offices to better meet the needs of this population.

¹ The term "district attorney" or "DA" is used generally to refer to any chief local prosecutor, including State's Attorneys, prosecuting attorneys, etc.

² Bureau of Justice Statistics (2006), *Mental Health Problems of Prison and Jail Inmates*, <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

³ See, e.g., Stepping Up Initiative (2018), *What You Can Do*, <https://stepuptogether.org/what-you-can-do>.

This brief provides background information on the need to reform how police, prosecutors, and others within the criminal justice system respond to individuals with mental illness. It then offers recommendations for prosecutors at every stage of the justice system — from the pre-arrest stage up to the point of reentry. Prosecutors can and should play an integral role as leaders in the criminal justice system in bringing about new thinking and collaborative reforms in order to ensure that the system is more just, compassionate, fair, and effective in protecting public safety and public health.

BACKGROUND

Approximately two million people with mental illness are booked into U.S. jails each year, and 15 percent of men and 30 percent of women booked into jails have a serious mental health condition.⁴ Few find the treatment they need within the justice system; at least 83 percent of jail inmates with a mental illness do not have access to needed treatment. Jail conditions can also be harmful to the mental health of those in custody.⁵ Overcrowding, safety issues, and lack of access to treatment can make incarceration a prolonged traumatic event and exacerbate existing mental health problems.⁶

The vast majority of people with mental illness who interact with the criminal justice system do not pose a threat to public safety.⁷ Rather, roughly two million people with mental illness cycle in and out of the criminal justice system for acts tied to inadequate community services — such as misconduct stemming from chronic homelessness⁸ or self-medicating with drugs or alcohol.⁹

⁴ Id.

⁵ National Alliance on Mental Illness (NAMI) (2018), *Jailing People with Mental Illness*, <https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Jailing-People-with-Mental-Illness>.

⁶ The Council of State Governments Justice Center (Feb. 2016), *Statement by Fred C. Osher, M.D.*, <https://www.judiciary.senate.gov/imo/media/doc/02-10-16%20Osher%20Testimony.pdf>.

⁷ Swanson, J. W., McGinty, E., Fazel, S., and Mays, V. M. (2015), *Mental illness and reduction of gun violence and suicide: Bringing epidemiologic research to policy*, *Annals of Epidemiology*, 25(5), 366-376, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4211925/>.

⁸ In 2016, a survey by the U.S. Department of Housing and Urban Development found that one in five homeless individuals had a serious mental illness. U.S. Department of Housing and Urban Development (Nov. 2017), *HUD 2017 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations*, https://www.hudexchange.info/resource/reportmanagement/published/CoC_PopSub_NatlTerrDC_2017.pdf.

⁹ In 2014, of the 20.2 million adults in the United States (8.4% of the population) who had a substance use disorder, over a third, 7.9 million people, also had a mental health disorder. Substance Abuse and Mental Health Administration (2014), *Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health*, <https://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.pdf>.

“There is a public health crisis in our nation surrounding mental health in the justice system. People’s lives hang in the balance. Our communities need their leaders to get in this fight.”

— PORTSMOUTH (VA) COMMONWEALTH’S ATTORNEY STEPHANIE MORALES

However, people with mental illness are significantly more likely to be a victim of a crime,¹⁰ and are more likely to be killed by the police. The risk of being killed during a police incident is 16 times greater for individuals with untreated serious mental illness than for other civilians.¹¹ In 2017, 236 people killed by police were experiencing some form of mental distress — nearly one in four of those killed that year overall.¹²

Jailing people with mental illness also poses an enormous financial burden. The cost of incarcerating a person with mental illness is three times the cost of incarcerating a person without one. Meanwhile, community mental health services represent a cost-effective alternative. Housing an individual with mental illness in jail costs \$31,000 annually on average, while community mental health services cost about \$10,000.¹³ Diversion programs for individuals with mental illness improve individual outcomes, reduce time spent in jail, and reduce recidivism.¹⁴

In sum, current practices do not promote positive outcomes for people with mental illness or the wider community and carry enormous human and financial costs. DAs should work with their behavioral health, policing, and correctional partners to engage in cross-system reform. Ultimately, improving responses to individuals with mental illness in the justice system not only improves individual outcomes, but also advances public safety, reduces officer-involved shootings, lowers overall jail populations, and results in cost savings which can be reinvested in more effective and compassionate interventions.

RECOMMENDATIONS

Prosecutors are well-positioned to promote practices that can help those with mental illness avoid the criminal justice system both because DAs can change their own office's policies and approach, and also because they play a leadership role system-wide. This list offers ideas for reforms and engagement by DAs at each stage in the criminal justice system.

Pre-arrest Interventions

Prosecutors can promote and support reforms among law enforcement, first responders, and key collaborators, including the following:

¹⁰ Desmarais, S., Van Dorn, R., Johnson, K., Grimm, K., Douglas, K., and Swartz, M. (2014), *Community Violence Perpetration and Victimization Among Adults With Mental Illnesses*, American Journal of Public Health, 104 (12), 2342-2349, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4133297>.

¹¹ Treatment Advocacy Center (Dec. 2015), *Overlooked in the Undercounted*, <http://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

¹² Sullivan, J., Anthony, Z., Tate, J., and Jenkins, J. (Jan. 2018), *Nationwide, police shot and killed nearly 1,000 people in 2017*, Washington Post, https://www.washingtonpost.com/investigations/nationwide-police-shot-and-killed-nearly-1000-people-in-2017/2018/01/04/4eed5f34-e4e9-11e7-ab50-621fe0588340_story.html?noredirect=on&utm_term=.6eb4fb461156.

¹³ National Alliance on Mental Illness (May 2015), *Treatment Not Jail: It's Time to Step Up*, <https://www.nami.org/Blogs/From-the-Executive-Director/May-2015/Treatment,-Not-Jail-It%E2%80%99s-Time-to-Step-Up>.

¹⁴ Research indicates that mental health courts have a modest impact on recidivism and significantly reduce jail time. Lowde, E.M, Rade, C., and Desmarais, S. (2018), *Effectiveness of Mental Health Courts in Reducing Recidivism: A Meta-Analysis*, Psychiatric Services, 69 (1), 15-22, https://ps.psychiatryonline.org/doi/abs/10.1176/appi.ps.201700107?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub%3Dpubmed.

1. **Encourage the use of public health, rather than criminal justice, models as a starting point for developing responses to individuals in crisis, especially by the police and other emergency responders.** Reducing the role of law enforcement officers as first responders to mental health crises as much as possible via mental health crisis hotlines and mobile crisis teams will help to prioritize treatment over enforcement — which can provide longer-term benefits to the individual and the community. When it is absolutely necessary for law enforcement officers to respond to individuals experiencing mental health crises, those officers should be Crisis Intervention Team (CIT) trained,¹⁵ and, if possible, accompanied by a mental health professional co-responder. “Virtual responders,” mental health professionals who remotely respond via video link as part of a mobile crisis team or with police officers, are another means of improving access to treatment even with limited resources or in rural communities.
2. **Eliminate the use of jail as a response to mental illness and advocate for improved access to community-based crisis services** like crisis stabilization or respite centers, where individuals can receive immediate support and connections to services in a trauma-sensitive and supportive environment. Appropriate community crisis services relieve burdens on emergency rooms, at a significantly lower cost and with a more effective and supportive environment for attending to the needs of individuals in crisis.
3. **Promote the Crisis Intervention Team (CIT) program model** for law enforcement and corrections officers, as well as 911 operators.¹⁶ CIT’s model for community policing brings together law enforcement, mental health providers, hospital emergency departments, and individuals suffering from mental illness to improve responses to people in crisis. Consider mental health first aid training when a full CIT program is not possible.
4. **Empower police officers and support programs to divert individuals into treatment** rather than making an arrest, and **champion the development of, and resources for, appropriate diversion facilities.**

¹⁵ The Crisis Intervention Team program is based on a model developed in Memphis in 1988, and is designed to train police officers to respond appropriately to individuals experiencing a mental health crisis, so that the situation does not escalate to the point of force or arrest, as well as to create community partnerships. CIT training is a 40-hour course consisting of lectures, site visits to mental health facilities, interaction with individuals with mental illness, and scenario-based de-escalation training. The training requires partnerships with both the local mental health advocacy community and behavioral health providers, and is a means not only of improving police responses, but also of improving community perceptions of legitimacy. University of Memphis (Sept. 2007), *Crisis Intervention Team Core Elements*, <http://cit.memphis.edu/pdf/CoreElements.pdf>.

¹⁶ While some jurisdictions have explored mandating CIT training for all or nearly all of their police force in order to ensure that CIT trained officers are able to respond to all relevant calls, recent research indicates that voluntary training models may be associated with better outcomes, due to more positive police attitudes toward the training and greater buy-in to the model. Compton, M.T., Bakeman, R. Broussard, B., D’Orio, B, and Watson, A.C. (2017), *Police officers volunteering for (rather than being assigned to) Crisis Intervention Team (CIT) training: Evidence for a beneficial self-selection effect*, Behavioral Sciences & the Law, 35 (5-6), 470-479, <https://cit-utah.com/resources/Documents/CIT%20Training%20Self-selecting%20Proves%20Better%20Outcomes.pdf>. See also Watson, A.C., Compton, M.T. & Draine, J.N. (2017), *The Crisis Intervention Team (CIT) model: An evidence-based policing practice?*, Behavioral Sciences & the Law, 35 (5-6), 431-441, <https://doi.org/10.1002/bsl.2304>.

“Public safety will increasingly be defined by how we manage our growing mental health crisis.”

— SAN FRANCISCO (CA) DISTRICT ATTORNEY GEORGE GASCÓN

5. **Examine and advocate for needed law enforcement reforms** such as use of force policies and de-escalation training, and support the development of non-lethal responses and tools (such as tasers) to de-escalate violent situations.

Post-arrest Interventions

Prosecutors can support educating justice system players about mental illness to **combat stigma** and **promote interventions and treatment**. Some ideas for specific interventions and initiatives include the following:

6. **Implement early evidence-based screening and assessment processes** within the prosecutor's office — and encourage police to adopt the same — in order to appropriately divert people who should receive treatment.
7. **Create bail policies that emphasize that mental illness should not be grounds for pre-trial detention** and prioritize access to treatment in the community.
8. **Consider and advocate for the least restrictive conditions of supervision and release** and incorporate risks-needs-responsivity¹⁷ best practices to avoid a cycle of re-incarceration often as a result of technical violations.
9. **Implement both misdemeanor and felony diversion programs and mental health courts**, and minimize exclusionary criteria as much as possible. Mental health diversion programs and courts will help to reduce the number of individuals with mental illnesses in the criminal justice system, reduce further stigmatization by a criminal conviction, and decrease the number of people with mental illness in jails and prisons.¹⁸
10. **Adopt an evidence-based definition of recovery.** The Substance Abuse and Mental Health Services Administration (SAMHSA)¹⁹ defines recovery as "a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential."²⁰ For individuals with severe mental illness, recovery may include life-long supportive services and psychiatric treatment. A realistic understanding of recovery is an essential component of developing procedures to address individuals with mental illness, both in the context of diversion and more broadly.
11. **Staff diversion programs and specialty courts with individuals interested and trained in these issues** and make clear that their work is valued in the office. Recognize and applaud their efforts and ensure that these positions provide an equal road to promotion.

¹⁷ Risk-Needs-Responsivity (RNR) refers to the three primary principles of evidence-based intervention. Specifically, that the intensity of treatment should vary by risk level; that interventions should target risk factors/needs for recidivism; and that treatment is most effective when it employs a cognitive-behavioral approach tailored to the learning style and attributes of the individual. Center for Court Innovation (2014), *Evidence Based Strategies for Working with Offenders*, <http://www.courtinnovation.org/sites/default/files/documents/EvidenceBasedStrategiesForWorkingWithOffenders.pdf>.

¹⁸ Research indicates that interventions are most effective when focused on higher-risk populations. Picard-Fritsche, S., Rempel, M., Tallon, J., Adler, J., and Reyes, N. (2017), *Demystifying Risk Assessment: Key Principles and Controversies*, Center for Court Innovation, 12-13, https://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf.

¹⁹ SAMHSA, the Substance Abuse and Mental Health Services Administration, is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance behavioral health nationwide through research, technical assistance, training, and grant programs.

²⁰ Substance Abuse and Mental Health Services Administration (2012), *SAMHSA's Working Definition of Recovery*, <https://blog.samhsa.gov/2012/03/23/definition-of-recovery-updated/#.Woc9DainGUm>.

12. **Provide training to line prosecutors and staff on the impact of mental illness and trauma**, recognizing the role of mental health conditions in what is often wrongly singularly presumed to be criminal conduct.
13. **Include individuals with lived experience as trainers, peer resource specialists, court navigators and consultants on policy issues.** Peers can both act as experts on recovery and model recovery for program participants. Peer support is an evidence-based intervention which has been shown to improve mental health outcomes.²¹
14. **Prioritize high utilizers of both criminal justice and behavioral health services** for more proactive and effective services.

Reentry

Jails and prisons need better tools to determine who needs mental health assistance and the resources to provide quality care, including for individuals reentering the community. Prosecutors should initiate or support the following practices:

15. **Support wrap-around services with continuity of care**, independent of law enforcement where possible.
16. **Collect data to effectively track individuals and measure success**, such as reduced recidivism and improved health and safety outcomes.
17. **Provide avenues for information sharing** among relevant agencies for more effective programming.
18. **Remove barriers to employment, housing, and public benefits** by creating partnerships with local businesses and advocating for policy changes in benefits availability and hiring criteria.
19. **Work with correctional and behavioral health leaders to ensure that individuals' public benefits, such as Medicaid, are reinstated at the time of their release from custody and reentry into the community**, to prevent treatment gaps as individuals transition to community-based services.

Using the DA's Leadership Position to Advance Reform

Elected district attorneys have significant clout in the community and are credible authorities on matters of public safety. District attorneys should use that power to bring the necessary players to the table and rally public support. The following are strategies that tap this ability to promote effective implementation of needed reforms:

20. **Build community support by developing community awareness campaigns regarding mental illness.** Create a taskforce or working group of community leaders, and, if applicable, use grand jury reports to lift up these issues and concerns and to help build support and momentum for change.

²¹ Substance Abuse and Mental Health Services Administration (2011), *Consumer-Operated Services: The Evidence*, <http://store.samhsa.gov/shin/content/SMA11-4633CD-DVD/TheEvidence-COSP.pdf>.

"In all too many criminal cases, there are underlying issues that are left unaddressed. Sending an offender to jail or prison doesn't change those issues."

— INGHAM COUNTY (LANSING, MI) PROSECUTING ATTORNEY CAROL SIEMON

21. At all stages of the criminal justice system, **empower, give voice to, and make space for individuals with lived experience with mental illness as advisors, trainers, and peer support professionals.**
22. **Build a relationship with your local mental health advocacy community** as a resource to assist in the promotion of better policies.
23. **Explore public/private partnerships** to unlock funding opportunities and program enhancements.
24. **Use the convening power** of the prosecutor's office to bring stakeholders to the table to design and implement programs.
25. **Develop a structure for collaboration**, like a criminal justice coordinating committee with a designated project coordinator to serve an essential role in grant writing and project management.
26. **Include school board representatives and educators** in your collaborative council or task force, to address both the school-to-prison pipeline and the mental health needs of youth.
27. At all stages of the criminal justice system, **incorporate the principles of trauma-informed care,²² cultural competency, and procedural justice.²³**
28. Advocate for treatment programs that can also **address co-occurring substance use and mental health disorders.²⁴**
29. **Advocate for filling housing voids**, particularly through "housing first" programs²⁵ that do not require treatment or participation in other programming as a pre-requisite to housing.²⁶
30. **Develop data sharing agreements and procedures** to promote collaboration between criminal justice entities and behavioral health providers.

²² See Fair and Just Prosecution, *Juvenile Justice and Young Adult Issues: Promoting Trauma-Informed Practices* (2017), <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.TraumaPractices.9.25.pdf>.

²³ See Fair and Just Prosecution, *Building Community Trust: Procedural Justice* (2017), <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.ProceduralJustice.9.25.pdf>.

²⁴ People with mental illness are three times more likely to develop substance use disorders than the general population and almost three-quarters of the adults with mental illness in jails have co-occurring drug and/or alcohol use disorders. See Regier, D.A., Farmer, M. E., Rae, D. S., Locke, B. Z., Keith, S. J., Lewis, L. L. and Goodwin, F. K. (1990), *Comorbidity of Mental Disorders with Alcohol and Other Drug Abuse*, *Journal of the American Medical Association*, 264(19), 2511-2518; Abram, K. M. and Teplin, L.A. (1991), *Co-Occurring Disorders among Mentally Ill Jail Detainees: Implications for Public Policy*, *American Psychologist*, 46(10), 1036-45.

²⁵ "Housing first" refers to a treatment approach that prioritizes access to permanent housing without preconditions and barriers to entry, such as sobriety and treatment services, to maximize housing stability. See US Department of Housing and Urban Development, *Housing First in Permanent Supportive Housing*, <https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>.

²⁶ People with mental illness are over-represented in homeless populations. Incarcerated persons with mental illnesses are much more likely to have been homeless at the time of their arrest than those without mental illnesses. Ditton, P. (1999), Bureau of Justice Statistics. *Mental Health and Treatment of Inmates and Probationers*.

"Restraint is the most important power of a prosecutor. We have the power to charge and the power not to charge."

— VERMONT ATTORNEY GENERAL T.J. DONOVAN

31. **Develop and support mechanisms for increasing benefit enrollment**, such as using the Supplemental Security Income (SSI)/Social Security Disability Insurance (SSDI) Outreach, Access, and Recovery (SOAR) model.²⁷
32. **Fight stigma** by promoting positive public narratives about people with mental illness and by modeling respectful and non-stigmatizing approaches to speaking with and about people with mental illness.

CONCLUSION

Prosecutors are uniquely positioned to lead reforms in the criminal justice system. DAs have the power to help redefine the meaning of public safety and combat the stigma too often attached to mental illness. Excessively incarcerating people with mental illness is not making communities safer. Instead, such punitive policies take a tremendous toll on those most affected by mental illness, as well as on the wider community. However, if elected prosecutors implement practical changes in their own offices and work with other system leaders to propel broader changes, they can make their communities safer and fairer for all constituents.

RESOURCES

- The Stepping Up Initiative is designed for county leaders and offers a comprehensive toolkit for implementing key elements of cross-system reform, from free screening and assessment tools to research briefs on effective crisis interventions: <https://stepuptogether.org>.
- The One Mind Campaign from the International Association of Chiefs of Police asks law enforcement agencies to pledge to implement four promising practices to improve police responses to mental illness, and offer resources to law enforcement partners: <http://www.theiacp.org/onemindcampaign/>.
- The National Alliance on Mental Illness is the nation's largest grassroots mental health organization and local NAMI chapters are important community partners for prosecutors: <https://www.nami.org>.
- The Substance Abuse and Mental Health Administration's GAINS Center for Behavioral Health and Justice Transformation is a resource for reports and research on behavioral health and criminal justice issues, as well as grant opportunities and technical assistance for grantees: <https://www.samhsa.gov/gains-center>.

²⁷ SOAR is a program designed to increase access to SSI/SSDI for adults who are experiencing or are at risk of homelessness and have a serious mental illness, medical impairment, and/or a co-occurring substance use disorder by reducing the challenges such individuals face when navigating the SSI/SSDI application process. The SOAR model can accelerate benefit application approvals and increase the overall approval rate for applicants. Substance Abuse and Mental Health Services Administration (SAMHSA) (2009), *Findings from a Study of the SSI/SSDI Outreach, Access, and Recovery (Soar) Initiative*, <https://aspe.hhs.gov/report/findings-study-ssissdi-outreach-access-and-recovery-soar-initiative>.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org

