FAIR AND JUST PROSECUTION
Promoting justice through leadership and innovation

ISSUES AT A GLANCE

Improving Justice System Responses to Individuals with Mental Illness: A Toolkit for Prosecutors

Fair and Just Prosecution (FJP) *brings together elected district attorneys[1] 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. If your office wants to learn more about this topic, we encourage you to contact us.**

SUMMARY

This FJP Toolkit offers a compendium of strategies for responding to individuals with mental illness who come into contact with the criminal legal system. This toolkit provides recommendations and useful resources for DAs interested in promoting compassionate, effective, and evidence-based innovations and strategies.

For additional background information, as well as over-arching principles and recommendations for DAs to implement in this area, please see FJP's brief *Improving Justice System Responses to Individuals with Mental Illness*. For information on replicable models from around the nation, including examples of promising practices that can avoid criminalization and reduce incarceration of people with mental illness at every stage of the criminal legal system, please see FJP's brief *Effective Collaborative Responses to Individuals with Mental Illness: A Compendium of Models from Across the Nation*.

Individuals with mental illness are overrepresented at every stage of the criminal legal system,[2] yet research indicates that the vast majority of these individuals do not pose a threat to the

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[1] The terms "district attorney" or "DA" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

[2] Estimates vary widely, but the research is clear that the prevalence of mental illness among incarcerated populations is higher than that in the community, sometimes by large margins. Prins, S. (2014), *Prevalence of Mental Illnesses in U.S. State Prisons: A Systematic Review*, Psychiatric Services, https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201300166; Bureau of Justice Statistics (2017), *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf.

"I will make whatever provisions are necessary within my office to ensure that we can bring programs to our community that are going to help address the needs of individuals suffering from mental illness."

— 9TH JUDICIAL CIRCUIT (ORLANDO, FL) STATE'S ATTORNEY MONIQUE WORRELL

community.[3] Instead, the over-incarceration of persons with mental illness reflects the fact that communities are ill-equipped to respond to people experiencing a mental health crisis.[4]

In communities without robust mental health crisis response systems and services, police may be called unnecessarily to respond to individuals experiencing a mental health crisis.[5] Often these law enforcement responders lack appropriate training and are left with few tools other than arrest. When law enforcement presence and arrest is the only response available, crisis situations may rapidly escalate, and, in too many instances, even result in deadly violence.[6] Likewise, without appropriate diversion resources and alternatives to incarceration, prosecutors may also resort to overly carceral and punitive responses even as over-incarceration continues to be a key driver of gaps in public health outcomes along racial and socioeconomic lines.[7]

Many jurisdictions around the nation have begun to explore proactive public health approaches to support, deflect, and/or divert individuals with mental illness who otherwise find themselves trapped in the criminal legal system. These new approaches emphasize fair and compassionate treatment and result in improved outcomes for the individual and the community, as well as significant cost savings. This toolkit offers examples of best practices, promising approaches, and innovations at every stage of the criminal legal system.

GETTING STARTED[8]

Prosecutors seeking to improve their responses to individuals with mental illness must collaborate with traditional partners such as law enforcement, the bench, and the defense bar, as well as with behavioral health providers, correctional administrators, and community leaders. Prosecutors can use their convening power to bring essential stakeholders to the table. Effective collaboration requires a shared understanding of expertise, needs, assets, and the interaction of systems, in addition to a shared commitment to reform.

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[3] 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.

[4] In part, this cycle of over-incarceration is driven by higher levels of homelessness and drug addiction associated with untreated mental illness. *See* U.S. Department of Housing and Urban Development (2021), *HUD 2021 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations*, https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2021.pdf; Vera Institute of Justice (2015), *First Do No Harm: Advancing Public Health in Policing Practices*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/first-do-no-harm/legacy_downloads/First-Do-No-Harm-FINAL-12032015.pdf; SAMHSA (2021), *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health*, https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf.

[5] Turner, N. (2022), *We Need to Think Beyond Police in Mental Health Crises*, Vera Institute of Justice, https://www.vera.org/news/we-need-to-think-beyond-police-in-mental-health-crises.

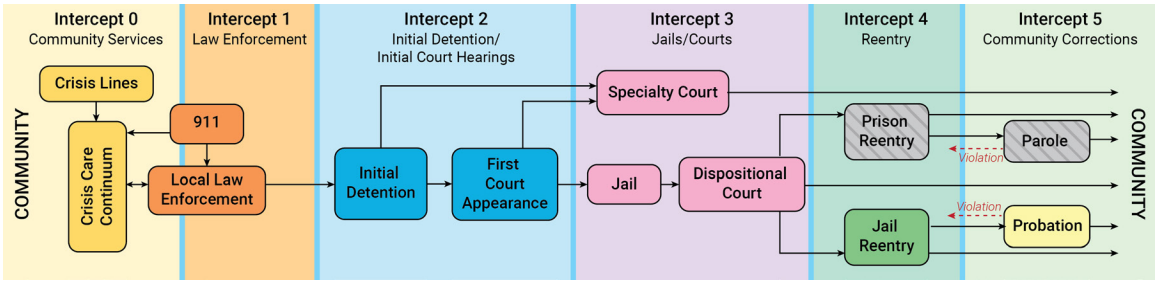
[6] Treatment Advocacy Center (2015), *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, http://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf; Iati, M., Rich, S., and Jenkins, J. (2022), *Fatal police shootings in 2021 set record since The Post began tracking, despite public outcry*, Washington Post, https://www.washingtonpost.com/investigations/2022/02/09/fatal-police-shootings-record-2021/.

[7] "For example, research in epidemiology indicates that had the U.S. incarceration rate remained at its 1973 level, then the infant mortality rate would have been 7.8 percent lower than it was in 2003, and disparity between black and white infant deaths nearly 15 percent lower." Vera Institute of Justice (2014), *On Life Support: Public Health in the Age of Mass Incarceration*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/on-life-support-public-health-in-the-age-of-mass-incarceration/legacy_downloads/on-life-support-public-health-mass-incarceration-report.pdf.

[8] Recommendations and resources for each part of the process appear at the end of the discussion section.

Strategic planning tools, processes, and structures, as well as effective communication, can help ensure that collaborations are fruitful. **Criminal justice coordinating councils** (CJCCs) are one such structure for collaboration.[9] A criminal justice coordinating council generally refers to a body of justice system and behavioral health system decision-makers and community representatives who meet regularly to coordinate systemic responses to justice issues, often staffed by a dedicated project coordinator and/or data analyst.[10] The council's regular meetings may be open to the public, or the minutes may be published, to encourage accountability and productivity. The CJCC can serve as a forum for strategic planning, a means for internal and external communication, and a central hub to perform data analysis and seek and manage grants for cross-system improvement.

The **Sequential Intercept Model** (SIM) is a useful strategic planning tool for CJCCs or other planning bodies to help partners develop a shared understanding of system needs, assets, and goals. The SIM is a means of examining how people with mental illness interact with every stage of the criminal legal system.[11] At each "intercept," or stage, leaders can ask what interventions are most needed to prevent involvement (or further involvement) of people with mental illnesses in the criminal legal system and which interventions will be most effective in their community. Leaders should also consider resources that are already available in the community and how to improve linkages across various service providers and the justice system.[12] The answers to those questions can form the basis of an overarching strategy to be implemented by the prosecutor and community partners. In the sections that follow, each intercept and its promising practices and innovations are described.



[9] U.S. Department of Justice, National Institute of Corrections (2002), *Guidelines for Developing a Criminal Justice Coordinating Committee*, https://info.nicic.gov/nicrp/system/files/017232.pdf; National Association of Counties (2015), *Resources on Criminal Justice Coordinating Councils*, https://www.naco.org/blog/resources-criminal-justice-coordinating-councils-cjccs.

[10] For example, the Johnson County, Kansas, Criminal Justice Advisory Council (CJAC) is composed of members from the sheriff's office, the health department, the bar association, and the district attorney's office. The Johnson County CJAC makes their governance documents and minutes publicly available to both increase transparency and serve as a model to other jurisdictions. *See* Johnson County (2022), *Criminal Justice Advisory Council*, https://www.jocogov.org/department/county-managers-office/criminal-justice-advisory-council.

[11] The Sequential Intercept Model was developed by Policy Research Associates for the Substance Abuse and Mental Health Services Administration's GAINS Center for Behavioral Health and Justice Transformation. For more information, *see* SAMHSA (2022), *The Sequential Intercept Model (SIM)*, https://www.samhsa.gov/criminal-juvenile-justice/sim-overview.

[12] For an example of a mapped system, *see* Oregon Center on Behavioral Health and Justice Integration (2010), *Multnomah County, Oregon, Sequential Intercepts for Change: Criminal Justice – Mental Health Partnerships*, https://www.ocbhji.org/_files/ugd/a5cb16_74c736c01a184f169bca9023facb65e5.pdf.

While reform at every intercept is ideal in the long-term, many jurisdictions begin by prioritizing a single intercept. For example, some jurisdictions first implemented court and jail-based diversion programs.[13] Others, such as Bexar County, Texas, found it most effective to prioritize improved crisis response measures at the pre-arrest stage.[14] Deciding where to begin the reform process is up to each individual community. The practices and innovations summarized below are neither exhaustive, nor do they represent a checklist of reforms that all jurisdictions dedicated to mental health reform must immediately implement; rather, they represent an array of possible responses to consider. This overview is also intended to help guide elected prosecutors as they aim to engage with and help promote change within their communities.

INTERCEPT ZERO: COMMUNITY SERVICES AND CRISIS RESPONSE

Intercept Zero refers to community-based mental health services, including crisis response, that avoid *in the first instance* contact with the criminal legal system.

When an individual is experiencing a mental health crisis, in many communities the only point of access to immediate treatment is a hospital emergency room or the police, via a 911 call. Removing criminal justice players and emergency rooms from the frontline of crisis response as much as possible is preferable as a way to limit conflict and unintended consequences of law enforcement involvement. It can also provide a significant source of cost savings, which can then be reinvested in programs and strategies that improve and increase service options and positive outcomes.

Prosecutors are important voices in public debates around crisis services, and should be vigorous advocates for effective mental health crisis services given the public safety implications. **Crisis response interventions** include mental health crisis hotlines, community mental health clinics, mobile crisis teams,[15] and crisis stabilization[16] or respite centers,[17] where individuals can receive immediate support and get connected to services in a welcoming, trauma-sensitive environment.

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[13] The 11th Judicial Circuit Criminal Mental Health Project in Miami, Florida, which now spans all intercepts, began with a post-booking diversion program. *See* Buntin, J. (2015), *Miami's Model for Decriminalizing Mental Illness in America*, Governing Magazine, http://www.governing.com/topics/publicjustice-safety/gov-miami-mental-health-jail.html.

[14] Bexar County's "Diversion 1.0" program began in 2003 by focusing on pre-arrest early intervention and constructing a 24/7 mental health crisis drop-off center. Bexar County's "Diversion 2.0" initiatives, started in 2014, focused on improving responses to people with mental illness at intercept two (initial detention) via improved screening and courtroom practices. Bexar County Mental Health Department, *Behavioral Healthcare from a Community Perspective*, https://slidetodoc.com/bexar-county-mental-health-department-behavioral-healthcare-from/.

[15] Mobile crisis teams respond to mental health emergencies in the community and can provide crisis stabilization and psychiatric assessment services to individuals in their homes or at other locations. *See* SAMHSA (2014), *Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies*, https://store.samhsa.gov/product/Crisis-Services-Effectiveness-Cost-Effectiveness-and-Funding-Strategies/sma14-4848.

[16] "Crisis stabilization" refers to a type of direct mental health service that is focused on de-escalating an individual's level of distress and/or need for urgent care associated with a substance use or mental health disorder. Crisis stabilization centers may take different forms. Common models are 23-hour observation facilities or short-term residential facilities, usually operated by psychiatric professionals. At these centers, individuals may be connected to long-term outpatient services or referred to inpatient care if necessary. Crisis stabilization centers may be used as "drop off" points by police officers diverting individuals experiencing mental health crises, as an alternative to emergency rooms. *Id.*

[17] "Crisis respite center" refers to an alternative to emergency hospitalization for individuals experiencing a psychiatric crisis, generally in a welcoming home-like setting. Models vary and individuals may be permitted to remain at the respite center for multiple days or weeks. Respite centers are often staffed by peer professionals, and provide a safe landing place to connect or reconnect to treatment, while maintaining ties to the community, usually at a much lower cost than hospitalization. *Id.*

Communities may wish to consider comprehensive non-police responder models, such as CAHOOTS or Denver's STAR program, which are equipped to address an array of crises and needs.[18] In addition to supporting community members and helping them to avoid entanglement in the criminal legal system, recent research on Denver's STAR program—a mobile crisis response unit staffed by two healthcare workers who respond to problems related to mental health, problematic substance use, poverty, and homelessness—found strong evidence of a decline in targeted crimes.[19]

Beyond crisis response, **community harm reduction services**,[20] such as overdose prevention sites and syringe exchanges, are critical to addressing co-occurring substance use disorders and mental illness.[21] Given the reticence that some law enforcement agencies may have toward harm reduction approaches or clinics, prosecutors have a particularly significant role to play in advocating for public health approaches, defending the legitimacy of harm reduction clinics, and discouraging policing practices that target the users of such clinics.[22]

INTERCEPT ONE: LAW ENFORCEMENT RESPONSE

Intercept One refers to law enforcement responses to individuals experiencing mental health crises or who have a mental illness, and is focused on the period of time prior to booking. In mental health crisis situations where a law enforcement response is deemed necessary for public safety, training responders and early diversion opportunities are both key to avoiding escalation of the situation and to reducing arrests. Interventions at this intercept include the Crisis Intervention Team model, Law Enforcement Assisted Diversion (LEAD),[23] co-responding multidisciplinary teams, and other opportunities for law enforcement officers to efficiently connect individuals to treatment in lieu of arrest, often at an access point like a crisis stabilization center. Law enforcement, however, must first be encouraged and empowered to divert, rather than arrest, individuals. Prosecutors can play a key role in promoting such a shift in the approach of their law enforcement partners.

Similarly, prosecutors and law enforcement can work to better recognize situations in which

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[18] Vera Institute of Justice (2020), *Behavioral Health Crisis Alternatives – Case Study: CAHOOTS*, https://www.vera.org/behavioral-health-crisis-alternatives/cahoots.

[19] Dee, T. and Pyne, J. (2022), *A community response approach to mental health and substance abuse crises reduced crime*, Science Advances, 8(23), https://www.science.org/doi/10.1126/sciadv.abm2106.

[20] Harm reduction is a public health philosophy that does not seek to eliminate drug use; rather, it focuses on minimizing the "personal and social harms and costs" associated with drug use and the spread of HIV and other infectious diseases. Harm reduction approaches include syringe exchanges, overdose prevention sites, and medication assisted treatment such as methadone. Hilton, B., Thompson, R., Moore-Dempsey, L., and Janzen, R. (2008), *Harm reduction theories and strategies for control of human immunodeficiency virus: a review of the literature*, Journal of Advanced Nursing, 33(3), 357-370, https://onlinelibrary.wiley.com/doi/ pdf/10.1046/j.1365-2648.2001.01672.x.

[21] Vera Institute of Justice (2017), *Minimizing Harm: Public Health and Justice System Responses to Drug Use and the Opioid Crisis*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-public-health-justice-system-responses-opioid-crisis/legacy_downloads/Minimizing-Harm-Evidence-Brief.pdf.

[22] Fair and Just Prosecution (2019), *Harm Reduction Responses to Drug Use*, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/08/FJP_Brief_HarmReduction.pdf; Vera Institute of Justice (2015), *First Do No Harm: Advancing Public Health in Policing Practices*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/first-do-no-harm/legacy_ downloads/First-Do-No-Harm-FINAL-12032015.pdf.

[23] For more information on Law Enforcement Assisted Diversion, *see* LEAD National Support Bureau (2017), *Essential Principles for Successful LEAD Implementation*, https://docs.wixstatic.com/ugd/6f124f_552d331f637f436189a38d14f9b823ad.pdf.

an individual with a mental illness commits a low-level misdemeanor offense, but may not be experiencing a mental health crisis. For example, law enforcement may receive a call for a trespassing offense without a clear indication prior to arriving on the scene that the individual has a mental illness, but those officers could – and should still try – to avoid an arrest or divert the individual to services.

The **Crisis Intervention Team** (CIT) model is based on a program 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.[24] 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.[25] The program 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 improving community perceptions of legitimacy. An often accompanying strategy is the use of multidisciplinary teams where law enforcement co-responds with mental health professionals.[26]

INTERCEPT TWO: ARREST, BOOKING, INITIAL DETENTION, AND FIRST APPEARANCE HEARINGS

Intercept Two refers to the initial period of arrest, booking, and preliminary court appearances. This is another key stage and opportunity to identify and address mental health concerns. A validated[27] risk assessment[28] can be a critical tool for prosecutors to identify individuals who may be best served by diversion and alternative to incarceration (ATI) programs.[29] Though somewhat counterintuitive, interventions are most effective when focused on higher-risk populations – intensive interventions can actually increase the risk of reoffending when applied to low-risk

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[24] University of Memphis (2007), *Crisis Intervention Team Core Elements*, http://cit.memphis.edu/pdf/CoreElements.pdf.

[25] 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 better police attitudes toward the training and greater buy-in to the model. *See* 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://www.ncbi.nlm.nih.gov/pmc/articles/PMC5741493; *See also* Watson, A.C., Compton, M.T., and 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.

[26] The Council of State Governments Justice Center (2021), *Developing and Implementing Your Co-Responder Program*, https://csgjusticecenter.org/publications/developing-and-implementing-your-co-responder-program/.

[27] In the context of criminal justice risk assessment, "Validation simply means that the items, risk scores, and risk categories in a tool are confirmed to have a statistically significant relationship with recidivism (a statistically significant relationship is one that cannot be attributed to chance)." Center for Court Innovation (2017), *Demystifying Risk Assessment: Key Principles and Controversies*, https://www.courtinnovation. org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf.

[28] A risk assessment evaluates a subject's risk of recidivism, whereas a screening or needs assessment evaluates treatment or service needs. Risk and need are not equivalent and should not be conflated – for instance, an individual may be both low risk and high need. *See* Center for Court Innovation (2018), *Understanding Risk and Needs in Misdemeanor Populations*, https://www.courtinnovation.org/sites/default/files/media/ document/2018/Misdemeanor_Populations_Risks_Needs.pdf (finding that need factors such as "receiving mental health treatment, flagging for PTSD on the trauma checklist, and other measures of mental illness had no relationship to recidivism").

[29] Center for Court Innovation (2017), *Demystifying Risk Assessment: Key Principles and Controversies*, 11-12, https://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20 Risk%20Assessment_1.pdf.

populations.[30] Accurate risk assessment can be helpful for prosecutors' offices and their partners to avoid adverse outcomes, as well as to make efficient use of scarce resources. When using these tools, though, it is critical for practitioners to remain vigilant and thoughtful in how they are utilized, and to ensure that they are not perpetuating racial biases and disparities.[31] Likewise, prompt and accurate screening for behavioral health needs and connection to services at the point of booking and arraignment can create early exit ramps from the criminal legal system,[32] as well as potentially improve health outcomes, such as overdose-related fatalities.[33]

Other interventions at this intercept include pre-trial diversion programs, charging guidelines that recognize the role of mental health conditions in potentially criminal conduct,[34] policies that limit the use of the competency to stand trial process, and bail policies that prioritize access to treatment in the community and avoid the conflation of mental illness and risk.[35]

INTERCEPT THREE: JAIL AND COURT

The third intercept refers to pre-trial detention and court appearances from the point of bail to sentencing. Interventions at this intercept include diversion models like long-term treatment courts, as well as constitutionally-required psychiatric treatment in correctional settings, in-reach programs at jails and prisons,[36] and improved training for correctional officers, court staff, and line prosecutors. Over 300 jurisdictions across the United States have mental health courts, and numerous models exist.[37] It is important to be aware of weaknesses within these models,

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[30] *Id.*

[31] Center for Court Innovation (2019), *Beyond the Algorithm: Pretrial Reform, Risk Assessment, and Racial Fairness*, https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond_The_Algorithm.pdf.

[32] SAMHSA (2019), *Screening and Assessment of Co-Occurring Disorders in the Justice System*, https://store.samhsa.gov/product/Screening-and-Assessment-of-Co-occurring-Disorders-in-the-Justice-System/SMA15-4930.

[33] The Economist (2017), *America's first opioid court is working well*, https://www.economist.com/united-states/2017/10/19/americas-first-opioid-court-is-working-well.

[34] For example, some research indicates that individuals with mental illness are more likely to resist arrest because they may not understand police instructions or may be experiencing paranoia or delusions. Therefore, a prosecutor's office could develop charging or declination guidelines for cases where the sole or primary charge is resisting arrest and there are indications of mental illness. *See* Kerr, A.N., Morabito, M., and Watson, A.C. (2010), *Police Encounters, Mental Illness and Injury: An Exploratory Investigation*, Journal of Police Crisis Negotiation, 10, 116-132, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2991059/.

[35] Adults living below the poverty line are twice as likely to be diagnosed with a serious mental illness. SAMHSA (2016), *Serious Mental Illness Among Adults Below the Poverty Line*, https://www.samhsa.gov/data/sites/default/files/report_2720/Spotlight-2720.html. Therefore, eliminating money bail and the "poverty penalty" is a critical component of reducing the number of individuals detained pre-trial with mental illness. For further recommendations regarding bail policies, *see* Fair and Just Prosecution (2017), *Bail Reform*, https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.BailReform.9.25.pdf.

[36] "In-reach" generally refers to treatment which takes place in a correctional, rather than community, setting.

[37] Fisler, C. (2015), *When Research Challenges Policy and Practice: Toward a New Understanding of Mental Health Courts*, Center for Court Innovation, https://www.courtinnovation.org/sites/default/files/documents/ JJ_SP15_54_2_Fisler.pdf.

"The jail is not the place to deal with mental health… This is not what it was built for."

— COOK COUNTY (CHICAGO, IL) STATE'S ATTORNEY KIM FOXX

including the potential for net widening, concerns with judges (who are not mental health experts) overseeing treatment trajectories, and their foundation as a coercive model of treatment.[38] Nonetheless, if they follow risk-needs-responsivity principles,[39] mental health courts have the potential to be an effective means of lowering rates of recidivism and/or reducing time spent incarcerated, though further research is needed.[40]

INTERCEPT FOUR: REENTRY

The fourth intercept is the point of reentry into the community after incarceration. Smooth transitions among treatment providers—without gaps or waiting periods—are a critical concern at the time of reentry. Prosecutors can be powerful public advocates for improving reentry services, such as programs which emphasize a continuity of care from jail-based services to community-based services, connections to Medicaid and Medicare, peer navigators to create recovery-oriented circles of support and offer models of recovery, "housing first" programs, and initiatives that improve access to employment.[41]

INTERCEPT FIVE: COMMUNITY CORRECTIONS

The fifth intercept is probation and parole. Prosecutors should avoid excessively lengthy probation sentences and an overwhelming number of conditions, which can lead to a cycle of technical violations and incarceration.[42] Furthermore, both prosecutors and probation and parole officers should be cautious to not conflate mental illness with an increased risk of reoffending, and thus impose more conditions on individuals with mental illness.[43] Specialized probation for individuals with mental illness – in which designated probation officers have specialized training in mental illness and lower caseloads in order to accommodate the higher needs of these individuals – is

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[38] Fair and Just Prosecution (2021), *Reconciling Drug Courts, Decarceration, and Harm Reduction*, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2021/02/FJP-Drug-Courts-Issue-Brief.pdf.

[39] 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 criminogenic risk factors/needs related to 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.

[40] "Compared to defendants in traditional courts, mental health court defendants have lower rates of reoffending, longer times in the community before committing new offenses, and fewer days of incarceration." Fisler, C. (2015), *When Research Challenges Policy and Practice: Toward a New Understanding of Mental Health Courts*, Center for Court Innovation, https://www.courtinnovation.org/sites/default/files/documents/ JJ_SP15_54_2_Fisler.pdf.

[41] *See* Krinsky, M.A., Hill, K.E., and Nidiry, R. (2022), *Working Toward a Fair and Just Reentry Process: The Role of Prosecutors*, American Bar Association Criminal Justice Magazine, 37(2), 5-12, https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2022/summer/working-toward-fair-and-just-reentry-process-role-prosecutors/; *See also* NYU Center on the Administration of Criminal Law (2017), *Disrupting the Cycle: Reimagining the Prosecutor's Role in Reentry – A Guide to Best Practices*, http://www.law.nyu.edu/sites/default/files/upload_ documents/CACL%20Report.pdf.

[42] Pew Charitable Trusts (2021), *States Can Shorten Probation and Protect Public Safety*, https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety; Columbia University Justice Lab (2018), *Too Big to Succeed: The impact of the growth of community corrections and what should be done about it*, https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf.

[43] The Council of State Governments Justice Center (2009), *Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice*, https://csgjusticecenter.org/wp-content/uploads/2020/02/Community-Corrections-Research-Guide.pdf.

also a promising practice.[44] Research indicates that community supervision services specifically designed for individuals with mental illness decrease rates of re-incarceration compared to traditional probation.[45] DAs should also use the influence of their office to call for such programs and services in their communities.

CONCLUSION

There are myriad opportunities for prosecutors to act to embrace a supportive treatment model and reduce the number of individuals with mental illness in the criminal legal system. While some jurisdictions may be better equipped to embark on ambitious and comprehensive cross-system reform, there are also many effective low- or no-cost steps that prosecutors can take to address mental illness in their jurisdictions – such as convening partner agencies to develop treatment options rather than punitive responses, speaking out on these issues, enhancing training, adopting policies that encourage deflection and diversion, and changing internal procedures. Regardless of their resources, prosecutors can and should take steps to decriminalize mental illness. Effective mental health interventions that improve public safety and decrease taxpayers' burden are a key component of a humane and compassionate criminal legal system.

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[44] Babchuk, L., Lurigio, A., Canada, K., and Epperson, M. (2012), *Responding to Probationers with Mental Illness*, Federal Probation, 76(2), http://www.uscourts.gov/sites/default/files/76_2_8_0.pdf.

[45] Skeem, J., Manchak, S., and Montoya, L. (2017), *Comparing Public Safety Outcomes for Traditional Probation vs Specialty Mental Health Probation*, JAMA Psychiatry, 74(9), 942-948, https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2647078; Skeem, J., Emke-Francis, P., and Eno Louden, J. (2006), *Probation, Mental Health, and Mandated Treatment: A National Survey*, Criminal Justice and Behavior, 33(2), 158-184, https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/ProbationMentalHealthandMandatedTreatment.pdf.

RECOMMENDATIONS

Getting Started

1. **Use the convening power** of the prosecutor's office to bring stakeholders to the table to design and implement new innovations, approaches, and programs.
2. **Build a relationship with your local mental health advocacy community** as a resource to assist in the promotion of better policies.
3. **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.
4. **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. Make sure the collaborative council reflects the diversity of the community.
5. 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.
6. **Adopt an evidence-based definition of recovery.** The Substance Abuse and Mental Health Services Administration (SAMHSA) 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."[46] 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.
7. **Explore public/private partnerships** to unlock funding opportunities and promote program enhancements.
8. **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.
9. **Develop data sharing agreements and procedures** to promote collaboration between criminal justice entities and behavioral health providers.
10. Advocate for treatment programs that can also **address co-occurring substance use and mental health disorders**.[47]

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[46] SAMHSA (2012), *SAMHSA's Working Definition of Recovery*, https://store.samhsa.gov/system/files/pep12-recdef.pdf.

[47] It is estimated that between 60-87% of "justice-involved individuals who have severe mental disorders also have co-occurring substance use disorders." SAMHSA (2015), *Screening and Assessment of Co-occurring Disorders in the Justice System*, https://store.samhsa.gov/sites/default/files/d7/priv/pep19-screen-codjs.pdf; *See also* Council of State Governments Justice Center (2020), *Improving Responses to People Who Have Co-occurring Mental Illnesses and Substance Use Disorders in Jails*, https://csgjusticecenter.org/publications/improving-responses-to-people-who-have-co-occurring-mental-illnesses-and-substance-use-disorders-in-jails/.

11. At all stages of the criminal legal system, **empower, give voice to, and make space for individuals with lived experience with mental illness as advisors, trainers, and peer support professionals**.

12. At all stages of the criminal legal system, **incorporate the principles of trauma-informed care,**[48] **cultural competency, harm reduction, and procedural justice.**[49] Utilize a racial equity lens in all decision-making to help identify and eliminate barriers for certain individuals and groups.

Intercept Zero

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 prioritize treatment over enforcement and also acknowledge the expertise needed to best address these situations, which can provide longer-term benefits to the individual and the community.

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 environment. Appropriate community crisis services relieve burdens on emergency rooms, come at significantly lower cost, and provide a more effective and supportive environment for attending to the needs of individuals in crisis.

Intercept One

1. **Promote the Crisis Intervention Team (CIT) program model and training** for law enforcement and corrections officers, as well as 911 operators. When it is absolutely necessary for law enforcement officers to respond to individuals experiencing mental health crises, those officers should be CIT trained, 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. Consider mental health first aid training when a full CIT program is not possible.

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

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

"We want to get people into treatment to get at underlying problems to stop criminal behavior. This is what all experts are telling us is the better way to go about this... under a public health analysis and, frankly, a public safety analysis."

— PHILADELPHIA (PA) DISTRICT ATTORNEY LARRY KRASNER

2. **Empower and encourage police officers to divert individuals into treatment rather than make an arrest, and champion the development of, and resources for, appropriate diversion programs and facilities.**
3. **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 to de-escalate violent situations.[50]

Intercept Two

1. **Implement early evidence-based screening and assessment processes** within the prosecutor's office – and encourage police to adopt the same strategies – in order to appropriately divert people in need of treatment.
2. **Create bail policies that make clear that mental illness and lack of housing should not be grounds for pre-trial detention** and prioritize access to treatment in the community.
3. **Limit the use of the competency to stand trial (CST) process to cases that cannot be dismissed or diverted** and work to expand opportunities for diversion to treatment. Work with stakeholders to ensure that everyone is trained in and understands the process and endeavor to continually evaluate and improve the CST procedures.

Intercept Three

1. **Implement both misdemeanor and felony diversion programs and consider mental health courts**, while making sure to minimize exclusionary criteria as much as possible for all of these strategies. Mental health diversion programs and courts can help to reduce the number of individuals with mental illness in the criminal legal system, reduce further stigmatization by a criminal conviction, and decrease the number of people with mental illness in jails and prisons, but they should also be used with caution and not serve as a substitute for deflection from the system, when appropriate.[51]
2. **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.
3. **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.
4. **Include individuals with lived experience as trainers, peer resource specialists, court navigators, and consultants in all aspects of this work**. Peers can both act as experts on and model recovery for program participants. Peer support is an evidence-based intervention which has been shown to improve mental health outcomes.[52]

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[50] These reforms are one component of broader police reforms that are needed. *See* Fair and Just Prosecution (2020), *Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System*, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf.

[51] Research indicates that interventions are most effective when focused on higher-risk populations. Center for Court Innovation (2017), *Demystifying Risk Assessment: Key Principles and Controversies*, 11-12, https://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf.

[52] SAMHSA (2011), *Consumer-Operated Services: The Evidence*, https://store.samhsa.gov/sites/default/files/d7/priv/sma11-4633-theevidence-cosp.pdf.

5. **Prioritize high utilizers of both criminal justice and behavioral health services** for more proactive and effective services.

Intercept Four

1. **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.
2. **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.
3. **Support wrap-around services with continuity of care**, independent of law enforcement where possible.
4. **Collect data to effectively track individuals and measure success**, such as positive development, desistance, and improved health and safety outcomes.
5. **Provide avenues for information sharing** among relevant agencies for more effective tracking and programming.

Intercept Five

1. **Consider and advocate for the least restrictive conditions of supervision and release** and incorporate risk-needs-responsivity best practices to avoid a cycle of re-incarceration as a result of technical violations.
2. **Advocate for community supervision services** specifically designed for individuals with mental illness.
3. **Avoid lengthy probation terms** and excessive or unmanageable supervision conditions.
4. **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.[53]
5. **Advocate for filling housing voids**, particularly through "housing first" programs[54] that do not require treatment or participation in other programming as a pre-requisite to housing.

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[53] 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. SAMHSA (2009), *Findings from a Study of the SSI/ SSDI Outreach, Access, And Recovery (SOAR) Initiative*, https://aspe.hhs.gov/pdf-report/findings-study-ssissdi-outreach-access-and-recovery-soar-initiative.

[54] "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* U.S. Department of Housing and Urban Development (2014), *Housing First in Permanent Supportive Housing*, https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf.

RESOURCES

Getting Started

Collaboration

Embedding Clinicians in the Criminal Justice System – Council of State Governments Justice Center, 2022
A brief that discusses the benefits of hiring clinicians to work with criminal justice agencies in order to support mental health and criminal justice collaborations.

From Silo to System: What Makes a Criminal Justice System Operate Like a System? – Justice Management Institute, 2015
An exploration of the common themes and characteristics of jurisdictions that have successfully broken down silos in the interest of cross-system reform.

Getting It Right: Collaborative Problem Solving for Criminal Justice – National Institute of Corrections, 2006
A guide for policymakers and practitioners interested in working together, containing an overview of activities, methods, and tools in the form of vignettes, examples, case descriptions, and exercises.

Guidelines for Developing a Criminal Justice Coordinating Council – National Institute of Corrections, 2022
A new microsite for elected and appointed policymakers responsible for public safety and criminal justice that defines and outlines steps and resources for creating a CJCC. The site provides resources – including governance documents, meeting agendas, and helpful templates – and discusses topics such as staffing, data analysis, and management.

Information Sharing in Criminal Justice - Mental Health Collaborations: Working with HIPAA and Other Privacy Laws – Council of State Governments Justice Center, 2010
A guide to federal and local privacy laws applicable to criminal justice and mental health collaborations, including helpful "frequently asked questions."

Keeping Your Criminal Justice Coordinating Committee Going Strong – National Jail Exchange, 2013
Tips and lessons learned about how to promote long-term cooperation from a successful criminal justice coordinating committee.

Measuring Performance of Criminal Justice Coordinating Councils – Justice Management Institute, 2013
A guide to assessing whether a jurisdiction's Criminal Justice Coordinating Council is on the right track.

"I will not criminalize addiction, poverty and mental illness. That will make us safer and truly help the people who need it. But we're going to look at every situation, and every individual, with common sense and a sense of humanity, because I think that being compassionate on crime is being smart on crime."

— FORMER SUFFOLK COUNTY (BOSTON, MA) DISTRICT ATTORNEY RACHAEL ROLLINS

Data

Closing the Gap: Using Criminal Justice and Public Health Data to Improve the Identification of Mental Illness – Vera Institute of Justice, 2012
A report of the findings of the Vera Institute of Justice's District of Columbia Forensic Health Project with useful recommendations for system leaders. (Fact Sheet)

Process Measures at the Interface Between the Justice System and Behavioral Health: Advancing Practice and Outcomes – Council of State Governments Justice Center, 2016
A guide to process measures that help gauge how well criminal justice and behavioral health systems are working together to effectively screen, assess, refer, and treat individuals.

Engagement

Engaging Stakeholders in Your Project – Center for Court Innovation, 2009
Thirteen proven strategies for engaging the community, drawn from the Center for Court Innovation's more than 25 years of experience mobilizing stakeholders in support of reform-oriented criminal justice operating programs.

Trauma-Informed Care

Trauma-Informed Approaches Across the Sequential Intercept Model – Council of State Governments Justice Center, 2022
A brief that identifies strategies to incorporate trauma-informed approaches at each stage of the justice system.

Trauma-Informed Care in Behavioral Health Services – SAMHSA, 2014
A manual with detailed information on trauma-informed care. Covers topics including trauma-informed screening and assessment, trauma-specific services, and strategies to develop a trauma-informed organization.

Trauma-Specific Interventions for Justice-Involved Individuals – SAMHSA, 2015
A brief that provides information on trauma, trauma-informed services, and trauma-specific programs for justice-involved people.

Intercept Zero

Behavioral Health Services and Harm Reduction

Approaches to Early Jail Diversion: Collaborations and Innovations – U.S. Department of Health and Human Services, 2019
A study that investigated research-based pre-booking jail diversion services at intercept zero for individuals with a serious mental illness or a substance use disorder, as well as community behavioral health programs at intercept one.

Behavioral Health Crisis Alternatives: Shifting from Police to Community Responses – Vera Institute of Justice, 2020
A report that provides an overview of crisis response programs, including the efforts of three communities—Eugene, Oregon; Olympia, Washington; and Phoenix, Arizona—to reduce the number of crisis calls directed to police.

Harm Reduction Responses to Drug Use – Fair and Just Prosecution, 2019
An issue brief that explains harm reduction principles and provides promising strategies and recommendations for prosecutors to reduce drug-related harms.

National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit – SAMHSA, 2020
A toolkit that provides national guidelines for crisis care and tips and tools to implement the guidelines.

Principles of Community-based Behavioral Health Services for Justice-Involved Individuals: A Research-based Guide – SAMHSA, 2019
A guide to engaging with community-based behavioral health providers who deliver mental health and substance use services to justice-involved individuals.

Crisis Services/Alternate Responder Programs

4 Tips to Successfully Open a Crisis Stabilization Unit – Rachel Lee, Council of State Governments Justice Center, 2020
This article discusses Crisis Stabilization Units (CSU), also known as crisis and drop-off centers, which provide officers with an option beyond traditional measures. CSUs are cost-efficient alternatives that improve community safety and prioritize behavioral health needs by linking people to appropriate supportive services, potentially reducing their criminal justice involvement.

A Community Response Approach to Mental Health and Substance Abuse Crises Reduced Crime – Thomas Dee and James Pyne, Science Advances, 2022
A research analysis of Denver's Support Team Assistance Response (STAR) program finding that the mobile crisis response unit significantly reduced targeted, less serious crimes, and had no effect on more serious crimes.

Advisory: Peer Support Services in Crisis Care – SAMHSA, 2022
An advisory report on the role of peer support services within the crisis care model.

Case Study: CAHOOTS – Vera Institute of Justice, 2020
A case study of Eugene, Oregon's Crisis Assistance Helping Out On The Streets (CAHOOTS) program, which utilizes teams of medics and crisis workers to respond to 911 and non-emergency calls for people experiencing a behavioral health crisis.

Case Study: CRU and Familiar Faces – Vera Institute of Justice, 2020
A case study of the Olympia (WA) Police Department's Crisis Response Unit and Familiar Faces program, which provide peer outreach to individuals with frequent law enforcement interactions.

Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies for Behavioral Health Crisis Services – SAMHSA, 2014
A report on the effectiveness of a variety of crisis service response strategies and evidence for their cost-saving benefits.

STAR Program Evaluation – Brian Blick, et al., Denver STAR Program, 2021
An initial 6-month evaluation of Denver's Support Team Assisted Response (STAR) program, which provides mobile crisis response to community members experiencing issues related to mental health, poverty, homelessness, and/or substance use.

Taking the Call Resources – Council of State Governments Justice Center, 2022
A repository of briefs, tools, evaluations, and technical assistance resources to assist communities in building effective crisis systems.

This City Stopped Sending Police to Every 911 Call – Christie Thompson, The Marshall Project, 2020
This article describes how Olympia, Washington, implemented a different approach to individuals in crisis based on mental health challenges, addiction, or homelessness. Instead of sending armed officers to respond, the city dispatches "crisis responders" to defuse the situation and connect the individual with services.

Intercept One

Crisis Intervention Teams/Crisis Response

Crisis Intervention Team: Core Elements – University of Memphis, 2007
A guide to implementing an effective CIT program, including key players, policies, procedures, and training topics.

Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises – CIT International, 2019
A how-to guide for individuals, communities, and organizations/agencies to build an effective CIT program.

Crisis Response Services for People with Mental Illnesses or Intellectual and Developmental Disabilities: A Review of the Literature on Police-based and Other First Response Models – Vera Institute of Justice, 2019
A comprehensive literature review on police and other first response models for people with mental health issues or intellectual and developmental disabilities.

Tailoring Crisis Response and Pre-Arrest Diversion Models for Rural Communities – SAMHSA, 2019
A brief for rural communities on strategies to develop or improve crisis response and pre-arrest diversion services for individuals with mental health issues and substance use disorders.

Law Enforcement Response and Reform

Applying Procedural Justice Theory to Law Enforcement's Response to Persons with Mental Illness – Amy Watson, PhD, and Beth Angell, PhD, Psychiatry Online, 2007
A review of the literature on police response to persons with mental illness using a procedural justice framework.

Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System – Fair and Just Prosecution, 2020
A report outlining concrete policy recommendations that elected officials, prosecutors, law enforcement heads, and other leaders can embrace to address police misconduct and racial injustice.

"We have changed the culture of the office to one that views pretrial incarceration as an exception and not the default, that values accountability, healing and safety over retribution, and that prioritizes serious crimes instead of criminalizing poverty, substance use and mental illness[.]"

— DURHAM COUNTY (NC) DISTRICT ATTORNEY SATANA DEBERRY

Data-Driven Justice Playbook: How to Develop a System of Diversion – National Association of Counties, 2016
A compendium of lessons learned and emerging best practices from city, county, and state leaders across the country.

Model Policy: Responding to Persons Experiencing a Mental Health Crisis – International Association of Chiefs of Police, 2018
A brief model policy for law enforcement for responding to individuals impacted by mental illness. (Fact Sheet)

Protocol for Responding to Persons with Mental Illness – San Antonio Police Department, 2016
Detailed protocols and procedures for law enforcement officers responding to persons with mental illness.

Intercept Two

Bail/Pretrial Detention

After Cash Bail: A Framework for Reimagining Pretrial Justice – The Bail Project, 2020
A roadmap to creating a more just, equitable, and humane pretrial system.

Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements – Council of State Governments Justice Center, 2015
A report on the essential elements for responding to people with mental illnesses and co-occurring substance use disorders at the pretrial stage, including collaboration, training, and performance measurement and evaluation. (Summary)

Competency Restoration

Closing the "Gap" Between Competency and Commitment in Minnesota: Ideas from National Standards and Practices in Other States – Robina Institute of Criminal Law and Criminal Justice, 2018
A research report examining competency and civil commitment that provides case studies and recommendations for redesigning the competency restoration system.

Just and Well: Rethinking How States Approach Competency to Stand Trial – Council of State Governments Justice Center, 2020
A report that provides an overview of the issues with competency evaluations and then proposes ten strategies to rethink how states handle the issue of competency to stand trial.

Leading Reform: Competence to Stand Trial Systems – National Center for State Courts, 2021
A brief report that provides recommendations to courts on the competency to stand trial process.

Lookin' for Beds in All the Wrong Places: Outpatient Competency Restoration as a Promising Approach to Modern Challenges – Dr. Neil Gowensmith, et al., Psychology, Public Policy, and Law Journal, 2016
A survey of outpatient competency restoration programs and public policy considerations.

Diversion/Treatment

Findings and Recommendations of the National Judicial Task Force to Examine State Courts' Response to Mental Illness – National Center for State Courts, 2022
A brief that provides recommendations in regards to state courts' response to mental illness.

Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System – SAMHSA, 2015
A report on the opportunities and challenges related to municipal court diversion for people with mental and substance use disorders.

The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System: A Scan of Practice and Background Analysis – The Urban Institute, 2015
A report on the societal and economic costs of incarcerating individuals with mental illness that provides information on promising criminal justice interventions and policies for these individuals.

Treatment Alternatives to Incarceration for People with Mental Health Needs in the Criminal Justice System: The Cost-Savings Implications – Vera Institute of Justice, 2013
A research summary on alternatives to incarceration for people with mental health issues that provides details on the fiscal benefits of treatment versus incarceration.

Screening and Assessments

Beyond the Algorithm: Pretrial Reform, Risk Assessment, and Racial Fairness – Center for Court Innovation, 2019
A research analysis of racial bias in the use of risk assessment tools.

Mental Health Screens for Corrections – National Institute of Justice, 2007
A brief review and summary of validated mental health screens.

Pretrial Risk Assessment Tools: A Primer for Judges, Prosecutors, and Defense Attorneys – Safety and Justice Challenge, 2019
An issue brief that provides legal stakeholders with an overview of pretrial risk assessment tools.

Reducing Criminal Recidivism for Justice-Involved Persons with Mental Illness: Risk/Needs/Responsivity and Cognitive Behavioral Interventions – Merrill Rotter, MD, and W. Amory Carr, PhD, 2013
A brief review of "Risk/Needs/Responsivity," the leading evidence-based recidivism-targeted intervention.

Risk, Race, & Recidivism: Predictive Bias and Disparate Impact – Jennifer Skeem, PhD, and Christopher Lowenkamp, PhD, 2015
A review of the evidence related to racial bias in risk assessment and considerations for policy makers designing or choosing risk assessment tools.

Screening and Assessment of Co-Occurring Disorders in the Justice System – SAMHSA, 2015
A comprehensive review of evidence-based screening and assessment approaches and challenges intended as a resource for clinicians, program administrators, law enforcement, and court personnel interested in developing and operating effective programs for individuals with co-occurring mental health and substance use disorders.

Using Mental Health Screening and Assessment to Serve Individuals with the Most Needs: Johnson County, Kansas Case Study – National Association of Counties, 2017
A case study of Johnson County's data initiatives, which is part of a series highlighting the six counties that constituted the "Best Practices" teams representing the Data-Driven Justice Initiative and the Stepping Up Initiative.

Intercept Three

High Utilizers

Prosecutors and Frequent Utilizers: How Can Prosecutors Better Address the Needs of People Who Frequently Interact with the Criminal Justice and Other Social Systems? – Institute for Innovation in Prosecution at John Jay College, 2019
A guide for prosecutors on addressing the unique issues presented by individuals who repeatedly cycle in and out of the criminal justice system.

Reducing Incarceration through Prioritized Interventions – University of Chicago, 2017
A summary of Johnson County's work to identify and target high-utilizers.

Jail

How to Collect and Analyze Data: A Manual for Sheriffs and Jail Administrators – National Institute of Corrections, 2007
A comprehensive implementation guide to data-driven justice for law enforcement and correctional partners.

Reducing the Number of People with Mental Illnesses in Jail: Six Questions County Leaders Need to Ask – Stepping Up Initiative, 2017
The Stepping Up Initiative's recommended starting place. Sets forth six questions essential to determining whether a system is ready to take on mental health reform, what pieces are missing, and where to begin.

Stepping Up Innovator Counties: Leading the Way in Justice System Responses to People with Behavioral Health Needs – Council of State Governments Justice Center, 2021
A brief that discusses how some counties are creating meaningful change to reduce the number of people with behavioral health needs in local jails.

The Legislative Primer Series for Front End Justice: Mental Health – National Conference of State Legislatures, 2018
A report on opportunities to reduce mental illness in jails using the Sequential Intercept Model.

Mental Health Initiatives

Judges' Guide to Mental Illnesses in the Courtroom – Judges' Criminal Justice/Mental Health Leadership Initiative, 2017
A quick "cheat sheet" to recognizing symptoms of mental illness in the courtroom with suggested responses.

Hot Topics: Breaking the Cycle - Counties Move to Divert Mentally Ill from Jail – National Association of Counties, 2017
A collection of articles introducing the Stepping Up Initiative and model programs.

"We can't incarcerate our way out of substance abuse; incarcerate our way out of mental health. We have to treat it."

— ST. LOUIS COUNTY (MO) PROSECUTING ATTORNEY WESLEY BELL

Salt Lake County, Utah: A County Justice and Behavioral Health Systems Improvement Project – Council of State Governments Justice Center, 2015
A qualitative and quantitative assessment of innovations in Salt Lake County. (Summary)

When Research Challenges Policy and Practice: Toward a New Understanding of Mental Health Courts – Carol Fisler, Center for Court Innovation, 2015
A summary of research findings with regard to "what works" in mental health courts.

Intercept Four

Recidivism

Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery – Council of State Governments Justice Center, 2012
A framework for reducing recidivism and improving outcomes for individuals in the criminal justice system with behavioral health problems.

Recidivism Reconsidered: Preserving the Community Justice Mission of Community Corrections – Harvard Kennedy School, 2018
A paper that urges a reconsideration of using recidivism as the main justice system measure and instead proposes focusing on positive outcomes related to desistance.

Reentry

Critical Connections: Getting People Leaving Prison and Jail the Mental Health Care and Substance Use Treatment They Need: What Policymakers Need to Know about Health Care Coverage – Council of State Governments Justice Center, 2017
A survey of local practices and legislative and administrative actions drawn from 30 states, as well as key questions and issues for policymakers to consider when seeking to help people leaving prison and jail connect to needed mental health and substance use treatment.

Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide – SAMHSA, 2017
A manual that provides examples of successful implementation of strategies that ease the transition from incarceration to the community for those with mental health or substance use disorders.

Reentry as Part of the Recovery Process – LaVerne D. Miller, J.D., Reentry Planning for Offenders with Mental Disorders, 2009
A discussion of the role of reentry programs in recovery using the Howie the Harp Peer Advocacy Center as a case study.

Working Toward a Fair and Just Reentry Process: The Role of Prosecutors – Miriam Aroni Krinsky, Kalyn E. Hill, and Rosemary Nidiry, 2022
An article that discusses the role of prosecutors in minimizing the harms of incarceration and supporting programming and services to help prepare people for reentry, as well as efforts prosecutors can engage in to support communities and ensure people are set up for success post-release.

Intercept Five

Community Supervision

A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism – Council of State Governments Justice Center, 2011
A ten-step guide for probation officials and county and state leaders to help transform probation agencies and focus their mission on reducing recidivism using research-informed approaches.

Building a Fair and Just Federal Community Supervision System: Lessons Learned from State and Local Reform Efforts – Miriam Aroni Krinsky and Monica Fuhrmann, 2022
An article that explores changes and innovations to community supervision on the state and local level – including reforms implemented by elected district attorneys across the country – that can be used as a model to transform the federal community supervision system.

Comparing Public Safety Outcomes for Traditional Probation vs Specialty Mental Health Probation – Jennifer L. Skeem, PhD, Sarah Manchak, PhD, and Lina Montoya, JAMA Psychiatry, 2017
A research study finding that specialty mental health probation substantially reduced re-arrest rates.

Implementing Specialized Caseloads to Reduce Recidivism for People with Co-Occurring Disorders – Council of State Governments Justice Center, 2021
A brief that outlines five critical practices to successfully implement a specialized caseload for people with co-occurring disorders.

Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice – Council of State Governments Justice Center, 2009
A report that provides strategies for better public health and public safety outcomes among individuals with mental illness under community corrections.

Policy Reforms Can Strengthen Community Supervision – The Pew Charitable Trusts, 2020
A comprehensive report that provides a framework for research-informed policy reforms to improve probation and parole.

Probation and Parole Systems Marked by High Stakes, Missed Opportunities – The Pew Charitable Trusts, 2018
A brief overview of probation and parole in the United States, highlighting the importance of improving supervision to enhance public safety and reduce incarceration due to revocations of supervision.

"The criminal justice system cannot fix all the problems. It can't necessarily fix the poverty problem. It can't necessarily fix the mental health problem. But what we can do is make sure we're not getting in the way."

— AUGUSTA (GA) JUDICIAL CIRCUIT DISTRICT ATTORNEY JARED WILLIAMS

Statement on the Future of Probation and Parole in the United States – Executives Transforming Probation and Parole and Fair and Just Prosecution, 2020
A joint statement with over 50 elected prosecutors joining 90 current and former probation and parole leaders to call for community supervision to be smaller, less punitive, and more equitable.

To Safely Cut Incarceration, States Rethink Responses to Supervision Violations – The Pew Charitable Trusts, 2019
A brief that examines state policy changes that have reduced technical revocations, the results of those changes, and sample legislation.

Housing

Action Points: Four Steps to Expand Access to Housing for People in the Justice System with Behavioral Health Needs – Council of State Governments Justice Center, 2021
A brief that outlines four steps state leaders can take to increase housing options for individuals with behavioral health needs involved in the justice system.

Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities – National Law Center on Homelessness and Poverty, 2019
A report that provides an overview of laws across the country that punish homelessness, information on the growth of these laws and their ineffectiveness, and recommendations for policies to address homelessness humanely.

Principles and Practice in Housing for Persons with Mental Illness Who Have Had Contact with the Justice System – Urban Institute, 2006
A paper that provides an overview of housing options for justice-involved individuals with mental illness, as well as promising practices.

The Connection between Health and Housing: The Evidence and Policy Landscape – Alliance for Health Reform, 2017
A toolkit that provides information on how housing initiatives can have positive impacts on health and result in cost savings.

APPENDIX
GLOSSARY OF KEY MENTAL HEALTH INTERVENTION TERMS

Co-occurring disorders refers to when an individual has both a substance use disorder and a mental health disorder at the same time.[55]

Co-Responder Team (CRT) refers to an approach that pairs health care professionals with law enforcement to address mental health calls.[56]

Community Responder Model refers to programs that respond to mental health and substance use crises with health professionals and trained crisis staff who can "provide immediate assistance to people in crisis, facilitate connections to support services, conduct wellness checks, and more."[57]

Crisis Intervention Team (CIT) refers to "an innovative first-responder model of police-based crisis intervention with community, health care, and advocacy partnerships" to assist individuals with mental illness.[58]

Crisis respite center generally refers to an alternative to emergency hospitalization for individuals experiencing a psychiatric crisis in a welcoming home-like setting. Models vary and individuals may be permitted to remain at the respite for multiple days or weeks. Respite centers are often staffed by peer professionals, and provide a safe landing place to connect or reconnect to treatment, while maintaining ties to the community, usually at a much lower cost than hospitalization.[59]

Crisis stabilization centers may take different forms. Crisis stabilization refers to a type of direct mental health service that is focused on de-escalating an individual's level of distress and/or need for urgent care associated with a substance use or mental health disorder.[60] Common models of crisis stabilization centers are 23-hour observation facilities or short-term residential facilities, usually operated by psychiatric professionals. At these centers, individuals may be connected to long-term outpatient services or referred to inpatient care if necessary.[61] Crisis stabilization centers may be used as "drop off" points by police officers diverting individuals experiencing acute mental health crises as an alternative to emergency rooms.

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[55] SAMHSA (2017), *The Way Forward: Federal Action for a System That Works for All People Living with SMI and SED and Their Families and Caregivers*, Appendix B, https://store.samhsa.gov/sites/default/files/d7/priv/pep17-ismicc-rtc.pdf.

[56] The Council of State Governments Justice Center (2021), *Developing and Implementing Your Co-Responder Program*, https://csgjusticecenter.org/publications/developing-and-implementing-your-co-responder-program/.

[57] The Council of State Governments Justice Center (2021), *Community Responder Programs: Understanding the Call Triage Process*, https://csgjusticecenter.org/publications/community-responder-programs-understanding-the-call-triage-process/.

[58] University of Memphis (2007), *Crisis Intervention Team Core Elements*, http://cit.memphis.edu/pdf/CoreElements.pdf.

[59] SAMHSA, *supra* note 17.

[60] SAMHSA, *supra* note 16.

[61] *Id.*

Cultural competency refers to "the ability to interact effectively with people of different cultures."[62] In practice, individuals, organizations, and treatment approaches can all be culturally competent. Culture can include race, ethnicity, age, gender, sexual orientation, disability, religion, income level, education, and geographical location. "Cultural competence means being respectful and responsive to the health beliefs and practices—and cultural and linguistic needs—of diverse population groups."[63]

Harm reduction is a "set of practical strategies and ideas aimed at reducing negative consequences associated with drug use" and "incorporates a spectrum of strategies that includes safer use, managed use, abstinence, meeting people who use drugs 'where they're at,' and addressing conditions of use along with the use itself."[64]

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, in order to maximize housing stability.[65]

In-reach generally refers to treatment which takes place in a correctional, rather than community, setting.

Medication-Assisted Treatment (MAT) refers to the use of medications, in combination with counseling and behavioral therapies, to treat substance use disorders. One common form of MAT is the use of methadone or suboxone to treat opiate addiction.[66]

Mental illness refers to disorders which involve changes to an individual's thinking, mood, and/or behavior.[67]

Mobile crisis teams respond to mental health emergencies in the community and can provide crisis stabilization and psychiatric assessment services to individuals in their homes or at other sites.[68]

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 the "Central Eight" 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.[69]

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[62] *Id.*

[63] *Id.*

[64] National Harm Reduction Coalition (2022), *Principles of Harm Reduction*, https://harmreduction.org/about-us/principles-of-harm-reduction/; *See also* Fair and Just Prosecution (2019), *Harm Reduction Responses to Drug Use*, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/08/FJP_Brief_HarmReduction.pdf.

[65] U.S. Department of Housing and Urban Development, *supra* note 54.

[66] Sometimes also referred to as "medications for addiction treatment." SAMHSA (2022), *MAT Medications, Counseling, and Related Conditions*, https://www.samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions.

[67] SAMHSA (2022), *Mental Health and Substance Use Disorders*, https://www.samhsa.gov/disorders/mental.

[68] SAMHSA, *supra* note 15.

[69] Center for Court Innovation, *supra* note 51. The "Central Eight" risk factors are (1) a history of criminal behavior, (2) an anti-social personality, (3) criminal thinking patterns, (4) frequent interaction with anti-social peers, (5) unmarried or otherwise experiencing family instability, (6) unemployed/unemployable, (7) not involved in pro-social leisure activities, and (8) substance abuse.

Serious Mental Illness (SMI) refers to "individuals 18 or older, who currently or at any time during the past year have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified in the diagnostic manual of the American Psychiatric Association and that has resulted in functional impairment that substantially interferes with or limits one or more major life activities. Major life activities include basic daily living skills (e.g., eating, bathing, dressing); instrumental living skills (e.g., maintaining a household, managing money, getting around the community, taking prescribed medication), and functioning in social, family, and vocational/educational contexts."[70] Schizophrenia, bipolar illness, and major depressive disorder are the diagnoses most commonly associated with SMI.

The **Sequential Intercept Model** is a framework which identifies "six key points for 'intercepting' individuals with behavioral health issues, linking them to services, and preventing further penetration into the criminal justice system."[71]

Trauma results "from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being."[72]

Trauma-informed care (TIC) refers to care involving three main elements: "(1) realizing the prevalence of trauma; (2) recognizing how trauma affects all individuals involved with the program, organization, or system, including its own workforce; and (3) responding by putting this knowledge into practice."[73] For example, TIC can involve training prosecutors on trauma and its impacts, and designing courtroom practices to create a sense of safety.

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[70] SAMHSA, *supra* note 55 at 11.

[71] SAMHSA (2019), *Principles of Community-based Behavioral Health Service for Justice-Involved Individuals: A Research-based Guide*, https://store.samhsa.gov/sites/default/files/d7/priv/sma19-5097.pdf.

[72] SAMHSA (2014), *Trauma-Informed Care in Behavioral Health Services*, https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816_litreview.pdf.

[73] *Id.*