



jail diversion strategies for persons with serious mental illness

a guide for mental health planning + advisory councils



US Department of Health and Human Services
Substance Abuse and Mental Health Services Administration
Center for Mental Health Services
www.samhsa.gov

This guide will help state mental health planning and advisory council members and others advocate for the implementation of jail diversion services to advance the quality of care for persons with mental illnesses.

Substance Abuse and Mental Health Services Administration

The Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services is comprised of three Centers that carry out the Agency's mission of improving the quality and availability of prevention, treatment, and rehabilitation services in order to reduce illness, death, disability, and cost to society resulting from substance abuse and mental illnesses.

The Center for Mental Health Services (CMHS) is the agency of SAMHSA that leads Federal efforts to treat mental illnesses by promoting mental health and by preventing the development or worsening of mental illness when possible. Congress created SAMHSA's CMHS to bring new hope to adults who have serious mental illnesses and to children with serious emotional disorders.

The National Association of Mental Health Planning and Advisory Councils

The state mental health planning and advisory councils have joined together to form the National Association of Mental Health Planning and Advisory Councils (NAMHPAC). Federal law requires the establishment of mental health planning councils to review state applications for block grant funding, to serve as advocates for adults with serious mental illnesses and children with serious emotional disturbances, and to monitor and evaluate state mental health planning systems. Although these activities are mandated, many states do not provide funding to support them. In many cases, this lack of funding combined with council members' often short tenures prevents these organizations from making their full impact on service delivery and consumer empowerment. NAMHPAC provides technical assistance to these organizations in the areas of exemplary practices, organizational development, and information sharing. In addition, NAMHPAC provides a national presence on mental health policy issues on behalf of the state planning and advisory councils.

We hope that each planning and advisory council member will closely read this document and use its information to develop the state plan for year 2005 and beyond. In addition, NAMHPAC will contact members of state councils to encourage them to use these materials, to evaluate how the materials were used, to identify topics for future pamphlets, and to gather suggestions for dissemination of such pamphlets.



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Introduction

This brochure is one of a series of publications developed by the National Association of State Mental Health Planning and Advisory Councils (NAMHPAC) to inform, educate, guide and galvanize mental health and substance abuse service advocates who serve on state mental health planning councils. It will also be of interest to members of the general public who are concerned about the relationship between the mental health and criminal justice systems. With support from the Center for Mental Health Services' Division of Knowledge Development and Application, previous brochures have targeted such high priority topics as assertive community treatment, supported employment, children's systems of care and co-occurring mental health and substance abuse disorders. Through this publication, NAMHPAC examines jail diversion strategies for persons with mental illness, a rapidly evolving response to one of the most pressing challenges facing the nation today.

The Nature of the Problem

Approximately 2 million people are incarcerated in U.S. prisons or jails on any given day.¹ According to a Report of the Surgeon General, approximately 5 percent of adults in America are considered to have a "serious" mental illness; that is, a mental disorder that significantly interferes with some aspect of an individual's daily functioning.² In contrast, the U.S. Department of Justice reports that about 16 percent of the population in prisons or jails at any given time has a mental illness, representing approximately 283,000 individuals.³ Over the course of a year, 10 million people enter U.S. jails⁴; nearly 700,000 of them have a serious mental illness.

The problem of mental illness among the population of persons in the nation's jails and prisons is serious and growing. In New York State, a five-year population study of persons in the mental health and correctional systems established that men who were involved with the public mental health system were four times as likely to be jailed as men in the general population.⁵ The Los Angeles County Jail, Chicago's Cook County Jail and New York City's Riker's Island "each hold more people with mental illness on any given day than any hospital in the United States."⁶ The Los Angeles County Jail has for a number of years been declared to be the largest mental health facility in the country. According to some, jails and prisons have become "de facto" psychiatric treatment facilities.⁷

This population of incarcerated individuals with mental illness has complex and challenging needs. Almost 75 percent of them have co-occurring mental health and substance abuse disorders.⁸ Homelessness is widespread - inmates with mental illness were 2.5 times more likely to have experienced homelessness in the year prior to arrest than inmates not diagnosed with mental illness.⁹ Nearly half of the inmates with mental illness in prison were incarcerated for committing a *nonviolent* crime.¹⁰ Many have been incarcerated for minor offenses such as trespassing, loitering, disorderly conduct and other symptoms of untreated mental illness.

Inmates with mental illness tend to serve longer sentences than inmates without mental illness.¹¹ The average length of stay for an inmate without a diagnosed mental illness at Riker's Island is 42 days; for individuals with a serious mental illness, it is 215 days.¹² In Pennsylvania in 2000, "having a serious mental illness meant that the inmate was three times as likely to serve his/her maximum sentence."¹³ Recidivism rates range as high as 70 percent in some states. While in jail, persons with mental illness tend to be more vulnerable to violence from other inmates.¹⁴ Mental health treatment while incarcerated is either limited or non-existent.¹⁵ The correctional experience has often both worsened their mental illness as well as made it more difficult to obtain necessary mental health treatment in the community once these indi-

viduals return home. Having a history of conviction and being labeled as a criminal may make community-based providers reluctant to treat some individuals.

For example, federal law denies Medicaid benefits to individuals in public institutions, including jails and prisons. States do have flexibility with regard to the termination of *eligibility* for benefits. If eligibility to receive Medicaid benefits has been terminated during incarceration, it is unlikely that they will be available to persons with mental illness upon discharge from correctional facilities unless special efforts have been made to reapply for benefits during the pre-release phase. Denying individuals the financial resources they need to survive in the community seriously undermines the effectiveness of post-release jail diversion programs.

Behind the facts and figures representing the number of persons with mental illness who are incarcerated in the nation's jails are the frustrating and often dismaying stories of the people who reside in local communities. Frequently, these individuals experience insufficient access to mental health treatment, followed by deterioration in health and well-being, and subsequent involvement with the criminal justice system. Families and friends are also often overburdened and frustrated by these experiences as well. For these consumer supporters, the difficulties that the consumer experiences in attempting to access benefits in treatment, services, and housing supports can greatly increase the amount of time that an individual remains dependent on friends and family members.

Police officers repeatedly arrest the same person for offenses (often low-level) which can be clearly be linked to their mental illness. Prosecutors charge individuals with misdemeanor nuisance crimes, knowing that they are likely to see the same individual again soon. Probation and parole staff responsible for working with persons with mental illness who have been released from jails and prisons see these individuals repeatedly rearrested for the same or similar behaviors that actually represent the symptoms of an untreated and disabling mental illness.

There is now widespread concern regarding the unmet needs of persons with mental illness in the nation's jails and communities and the toll it exacts on these individuals, their families, service agencies and the criminal justice system. With this concern comes a growing conviction that a turning point has been reached: Effective measures must be taken to prevent these individuals from entering the nation's jails and prisons in the first place. The consequences of maintaining the status quo can be expensive and for some even dangerous.

A National Response: Jail Diversion

The increasing involvement of persons with serious mental illness in the criminal justice system has enormous fiscal, public safety, health and human costs. Diverting individuals with mental illness away from jails toward more appropriate community-based mental health treatment has emerged as an important component of national, state and local strategies to provide effective mental health care; to enhance public safety by making jail space available for violent offenders; to provide judges and prosecutors with alternatives to incarceration; and to reduce the cost of providing inappropriate mental health services or no services at all. The success of jail diversion approaches in communities across the country is generating genuine excitement and hope that real progress can be made in meeting this challenge.

There are two major kinds of jail diversion programs, which can happen at any point along the continuum of involvement with the criminal justice system: pre-arrest and post-arrest.

Pre-Arrest (“Pre-Booking”) Diversion Strategies

Pre-arrest strategies typically focus on police officers who are often the first point of contact with persons with mental illness in crisis. Since their initial interactions with persons with mental illness are so critical to determining the situation’s outcome (i.e., whether or not an individual with mental illness is jailed), pre-arrest jail diversion strategies rely heavily on police becoming knowledgeable about the nature of mental illness, de-escalating crisis situations and providing options for mental health treatment alternatives to incarceration that are available in the community. Examples of pre-arrest strategies include: police training to recognize the signs of mental illness; deployment of a mobile crisis response team that provide assistance and support to police and the individual; and transportation to mental health treatment rather than jail.

- *The Memphis, Tennessee Crisis Intervention team (CIT) is a pre-arrest diversion program staffed by police officers that are specifically trained in mental health issues. CIT officers maintain their regular responsibilities as well as providing specialized response to crisis calls in partnership with a local psychiatric emergency center, which accepts all referrals from police personnel. Initial indications are that the program has a high utilization rate by patrol officers and a low arrest rate for mental health crisis calls and high referrals to mental health treatment.*
- *In collaboration with the Summit County Alcohol, Drug Addition and Mental Health Services Board and the National Alliance for the Mentally Ill of Summit County, the Akron, Ohio Police Department inaugurated a Crisis Intervention Team in May 2000. This partnership between mental health and law enforcement enables police officers to de-escalate crises in the community, provide a link to community-based mental health treatment and avoid criminalizing persons with mental illness. Working through specially trained police officers and emergency medical services personnel, only 6% of encounters result in arrest.*

Post-Arrest (“Post-Booking”) Diversion Strategies

Post-booking diversion programs are the more common type of jail diversion program in the United States. After formal charges have been filed, post-booking programs screen individuals to determine the presence of mental illness; negotiate with prosecutors, attorneys, courts and mental health providers to dispose of the case without additional jail time; and link the individual with mental health treatment as a condition of a reduction in charges, deferred prosecution, or in place of prosecution. Mental health courts are an example of a post-booking jail diversion program.

Mental health courts hear cases involving persons with mental illness who have been charged with non-violent crimes. They divert these individuals away from jail or prison by negotiating a mental health treatment program that might include group or day services, psychotropic medication, case management or inpatient hospitalization in order to restore defendants to stable functioning in their communities.

- *Maryland’s “Phoenix Project” offers post-booking diversion services for women and children. Female consumers are offered the use of crisis and transitional housing for themselves and their children and participate in integrated mental health/substance use treatment and case management.*
- *Montgomery County, Pennsylvania operates both pre- and post-booking diversion services, with dispositions that range from charges being dropped to the client returning to court to face charges. Police training, 24-hour crisis response, inpatient treatment, case management and outreach services are all available.*
- *Broward County, Florida developed the nation’s first mental health court in 1997, modeled after existing drug courts. The court’s caseload has grown significantly since its creation, increasing from an average of 40 cases per month in its first year to an average of 55 cases per month at the present time. It emphasizes acceptance of mental health treatment services as a*

condition of participation, focusing on persuading individuals to voluntarily continue with treatment rather than on applying punitive measures to assure compliance.

Key Characteristics of Jail Diversion Programs

States and communities across the country are creating innovative and progressive programs uniquely suited to their local needs and resources. This diversity is crucial to the acceptance and effectiveness of jail diversion programs along the services continuum. Nevertheless, a number of key program characteristics are common to jail diversion programs. They include:

- Jail diversion programs are based on the fundamental principle that treatment must be provided in the least restrictive setting possible. Emphasis is placed on community-based treatment services that maximize individual choice and minimize civil or criminal legal constraints.
- Service integration at the community level is key, including partnerships among mental health, substance abuse, social services, justice and other agencies that are essential to developing a well-coordinated response;
- Regular contacts occur for sharing information, coordinating services and addressing problems;
- Experienced staff are responsible for bridging the gaps between mental health, substance abuse and criminal justice systems to ensure coordination of care;
- Strong and effective leadership creates and guides service development and delivery;
- Programs are committed to early identification of and intervention for individuals with mental health treatment needs who can be diverted into treatment.¹⁶



State Initiatives

According to the Criminal Justice and Mental Health Consensus Project, almost half of the states have established special commissions or task forces within the past four years to explore some aspect of the mental health system. An additional 5 states have introduced legislation calling for the establishment of such bodies. Almost half of those bodies have been specifically directed to investigate the criminalization of mental illness.¹⁷

Federal Initiatives

Jail Diversion Knowledge Development and Application Program

This multi-year project sponsored by the Substance Abuse and Mental Health Services Administration (SAMHSA) in 1997 is one of a number of initiatives targeting jail diversion. The program is unique because it seeks to establish an evidence base for practice and to develop replicable models that can be adapted for use across the country. The Center for Mental Health Services (CMHS) and the Center for Substance Abuse Treatment (CSAT) have collaborated in this project to study the effectiveness of jail diversion programs serving people with co-occurring disorders nationwide. Nine sites participate in the study.¹⁸

Targeted Capacity Expansion (TCE) Grants for Jail Diversion Programs

In 2002, SAMHSA's Center for Mental Health Services announced the availability of funds for programs to divert individuals with mental illness from the criminal justice system to mental health treatment and appropriate support services. The goal of this collaboration with the Department of Justice is to improve policy and practice for addressing the needs of persons with mental illness who become involved with the criminal justice system. Seven additional sites were added in Fiscal Year (FY) 2003, and three sites in FY 2004. These programs seek to expand evidence-based services, cre-

ate services linkages among providers of mental health and substance abuse services and the criminal justice system, undertake community outreach to educate the larger community on the importance of mental health and the capacity of the jail diversion program to serve people with mental illnesses.

The Criminal Justice and Mental Health Consensus Project

The Criminal Justice/Mental Health Consensus Project is a two-year national effort to develop specific recommendations that national, state and local policymakers and criminal justice and mental health professionals can use to improve the criminal justice system's response to individuals with mental illness. The project is coordinated by the Council of State Governments in New York City and guided by a Steering Committee of six organizations, including: The Police Executive Research Forum (Washington, DC); The Pretrial Services Resource Center (Washington, DC); Association of State Correctional Administrators (Middletown, CT); National Association of State Mental Health Program Directors (Alexandria, VA); The Bazelon Center for Mental Health Law (Alexandria, VA); The Center for Behavioral Health, Justice and Public Policy (Jessup, MD).

In 2002, the project published a groundbreaking and extensive report that provides an array of options and ideas to address the needs of persons with mental illness who come into contact with the criminal justice system.¹⁹

Effectiveness of Jail Diversion Programs

Research conducted to date on the effectiveness of jail diversion programs is limited. Outcome and evaluation results from the Memphis CIT program suggest that jail diversion services have been effective. Officers perceive the program in a positive light and have increased confidence in their ability to handle crises; response times range between 5 to 10 minutes; officer injury rates are down while referral rates to

emergency health care are up. The program maintains an extremely low arrest rate.²⁰ The Mental Health Court in Broward County has identified gaps in service, created a demand for additional services and provided support for additional fiscal appropriations from the state legislature.²¹

In Chicago, the Thresholds Jail Diversion Program provides case management services for individuals with mental illness released from jail in Cook County. They estimate that after completing the program, one group of 30 participants spent 2,200 days less in jail (at a cost of \$70 per day) and 2,100 fewer days in the hospital (at a cost of \$500 per day).²² The Albuquerque Police Department reported that the impact of its CIT program included an arrest rate of less than 10%, a reduction of injuries and a 58 percent decrease in the use of SWAT.²³

SAMHSA's Jail Diversion Knowledge Development and Application Project studied the effectiveness of jail diversion services in several sites that serve individuals with co-occurring mental health and substance use disorders. Results suggest that:

- Diversion increased access to services and treatment. Diverted subjects are about 25% more likely to receive mental health counseling services.
- Diverted subjects spend more time in the community and less time in jail than those who are not diverted, resulting in cost savings.
- Diverted subjects were no more likely to be arrested than those not diverted. Therefore, suggesting that the additional time spent in the community was not a trade-off for public safety.
- The implementation of diversion programs require greater efforts to ensure initial and continued access to services. Unfortunately less than half of the diverted subjects received mental health counseling and even fewer received substance abuse treatment.²⁴

Program Funding

Mental health and criminal justice programs and services are funded by a bewildering array of funding sources, agencies and organizations, each with their own rules and regulations. Existing needs seem to far outstrip our ability to fund them. Jail diversion programs represent another service demanding a share of already scarce resources; no single system can pay for all of the services needed to create the full continuum of jail diversion services needed.

Some communities have, however, successfully devised ways to blend funds at the local level to support jail diversion strategies.²⁵ The underlying principle of their efforts is that each agency or system brings resources (funds, staff, space, etc.) to contribute to the development of jail diversion services created by their partnership to reach a common goal.

- *Maryland's Community Criminal Justice Treatment Program (MCCJTP) identifies individuals who are incarcerated for minor offenses in local detention centers and enables them to participate in appropriate community-based services as an alternative to jail. Plans are developed that include housing, mental health treatment, case management, job training and education. County-based services originate with "seed" funding provided by the State Department of Mental Hygiene and are supplemented with funding from the U.S. Dept. of Housing and Urban Development, Projects for Assistance in Transition from Homelessness, SAMHSA, social services and criminal justice systems.*
- *The King County (Seattle) pre-booking diversion program is supported by multiple funding streams from five separate systems that allowed for the creation of crisis triage services to divert non-violent misdemeanants with mental illness and substance abuse away from booking in the county jail to mental health care. Overcoming limitations imposed by these categorical funding streams is a continuing challenge.*

Concerns About Jail Diversion Programs

While jail diversion programs have attracted strong support among policy makers, criminal justice personnel, mental health providers, law enforcement, and family members, some consumers are concerned that jail diversion programs further restrict the rights of people with mental illness. Specifically, they suggest that the involvement of persons diagnosed with mental illness with the criminal justice system is often actually more about a lack of money to buy decent food and housing than about mental illness, and that sharing information between mental health and law enforcement agencies further stigmatizes and criminalizes mental illness. Consumers are also concerned that people are coerced into treatment that will be difficult to end, and that jail diversion programs help to “merge” the criminal justice and mental health treatment systems.²⁶

The Council’s Role in Developing, Implementing and Evaluating Jail Diversion Programs

The impact of jail diversion programs - however thoughtful and well intentioned - largely depends on the availability of effective mental health services at the local level. Consumers, policy-makers, police, judges, corrections officials and staff have the right to expect that high quality mental health services are in place to support persons with mental illness that are diverted from jails. State mental health planning council members can assess their own state mental health system’s performance and overall readiness to implement jail diversion programs by considering how many of the following key elements of an effective mental health service system are in place.

- **Evidence-based practices.** Research demonstrates that some approaches to mental health care are more effective in producing desired outcomes than others, such as Assertive Community Treatment (ACT) teams; integrated treatment of co-occurring mental health and substance

abuse disorders; use of atypical antipsychotic medications; supported employment; family psycho-education; and illness self-management. As the Surgeon General has pointed out, however, there is a significant gap between what we know works and what we practice.²⁷

- **Collaboration with key partners.** State and local mental health agencies increasingly recognize that effective services development, financing and delivery depend on their having strong working relationships with essential partners, such as education, criminal justice, substance abuse, primary care, HIV/AIDS services to meet the needs of the “whole” person in an integrated way. This collaboration may include blending of funding streams that have historically been regarded as separate and distinct, as well as minimizing or eliminating any licensure and regulatory barriers to developing and implementing comprehensive and integrated service systems.
- **Housing.** Safe, affordable and stable (i.e., long-term) places to live are a basic need of all persons, including those diagnosed with mental illness, who are among the poorest in the nation and who generally have less access to the resources necessary to choose and retain appropriate housing. Federal housing policy makes it more difficult for ex-offenders with mental illness to obtain appropriate housing. In fact, some federal policies require that publicly assisted housing providers deny housing to those with certain criminal histories.²⁸
- **Consumers and family member involvement.** Program planning, funding, service delivery and evaluation all benefit immeasurably from the experience that consumers and family members bring to any discussion of ways to create a more effective treatment response.
- **Culturally competent services.** The nation’s increasing ethnic and cultural diversity challenges mental health service systems to develop and deliver services that take into account and respond to the unique needs, perspectives and strengths of minority communities.

- **Purchase of performance and outcome.** As public agencies, mental health service delivery systems should be held clearly accountable for their successes and failures. Successes should be supported and replicated, whenever possible. Advocates should help agencies identify and eliminate service deficiencies. Financial resources should be tied to the achievement of measurable outcomes.

More specifically, state mental health planning council members should educate themselves about the workings of the criminal justice system and the ways in which mental health and criminal justice agencies interact. As with most other systems, criminal justice systems possess a distinct culture, language, operational style and approach to the performance of their functions that must be understood as a first step in developing strong and effective partnerships. Building relationships with district attorneys, judges, police personnel and others involved in the criminal justice system will help create the alliances necessary to developing jail diversion programs.

State mental health planning councils should consider the population of persons with mental illness who are involved with the criminal justice system as a high priority, perhaps conducting a state-specific needs assessment to better understand the nature and extent of the problem within their state. Self education about the range of jail diversion strategies in use across the country will help councils to contribute more skillfully to any discussions surrounding jail diversion program development, funding, implementation and evaluation and to the creation of an effective action plan.

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Resources

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services

1 Choke Cherry Road
Rockville, MD
Phone: (800) 789-2647
TDD: (866) 889-2647
www.mentalhealth.org

National Association of State Mental Health Program Directors Research Institute

66 Canal Center Plaza, Suite 302
Alexandria, VA 22314
Phone: (703) 739-9333
Fax: (703) 548-9517
www.nasmhpd.org/nri

The National GAINS Center The TAPA Center for Jail Diversion Policy Research Associates, Inc.

345 Delaware Avenue
Delmar, New York 12054
Phone: (866) 518-TAPA
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National Institute of Justice

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OJP Online Research Information Center:
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National Mental Health Association

2001 N. Beauregard Street, 12th Floor
Alexandria, Virginia 22311
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Fax: (703) 684-5968
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**National Alliance for the Mentally Ill
Center on Practice and Research**

Colonial Place Three
2107 Wilson Boulevard, Suite 300
Arlington, VA 22201
Phone: (703) 524-7600
www.nami.org

**The Bazelon Center for
Mental Health Law**

1101 15th Street NW
Suite 1212
Washington, DC 20005
Phone: (202) 467-5730

Additional Published Resources

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Web Sites

Bazelon Center for Mental Health Law: www.bazelon.org

Center for Problem Solving Courts:
www.problemsolvingcourts.com

NIC Jails Division: www.nicic.org/about/divisions/jails.htm

Community Corrections: www.corrections.com

Criminal Justice/Mental Health Consensus Project:
www.consensusproject.org

The National GAINS Center: www.gainscntr.com

U.S. Department of Corrections, Bureau of Justice Statistics:
www.ojp.usdoj.gov/bjs/welcome.html

Substance Abuse and Mental Health Services Administration:
www.samhsa.gov

Center for Mental Health Services:
www.mentalhealth.samhsa.gov/cmhs

Center for Substance Abuse Treatment: <http://csat.samhsa.gov>

U.S. Department of Justice, Office of Justice Programs:
www.ojp.gov

