



NATIONAL ASSOCIATION OF MENTAL HEALTH PLANNING AND ADVISORY COUNCILS POLICY STATEMENT

In support of maximum diversion of persons with serious mental illness from the criminal justice system

National Association of Mental Health Planning and Advisory Councils

2001 North Beauregard Street
12th Floor
Alexandria, VA 22311

703.838.7522
703.684.5968 FAX

www.namhpac.org

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Statement of Policy

The National Association of Mental Health Planning and Advisory Councils supports maximum diversion from the criminal justice system of all persons accused of crimes for whom voluntary mental health treatment is a reasonable alternative to the use of criminal sanctions, at the earliest possible phase of the criminal process, preferably before booking or arraignment. Conversely, NAMHPAC does not support the use or threat of use of criminal sanctions to compel mental health treatment. These principles apply with equal force to adult and juvenile offenders.

NAMHPAC supports the long-term goal of a culturally competent community-based mental health system focused on consumer empowerment and quality of life, building on the strengths of persons affected by serious mental illness and aiming at their recovery in a manner that integrates them into the community. Our society's recent focus on lifestyle crimes which punish behaviors inherent in living on the streets coupled with an emphasis on community policing have all-too-often led to the "criminalization" of mental illness and poverty

NAMHPAC encourages the development of diversion strategies that promote police officer training, community engagement, and early intervention in an effort to keep persons with mental illness out of the criminal justice system.

Rationale for this Policy

Approximately 2 million people are incarcerated in U.S. prisons or jails on any given day.ⁱ 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.ⁱⁱ 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,ⁱⁱⁱ representing approximately 283,000 individuals. Over the course of a year, 10 million people enter U.S. jails;^{iv} nearly 700,000 of them have a serious mental illness. Youth in the juvenile justice system experience substantially higher rates of mental health disorders than youth in the general population.^v

In his subsequent report entitled, *Mental Health: Cultural, Race, and Ethnicity*, the Surgeon General concluded that disparities existed in mental health systems for persons of diverse

populations, and that mental illnesses exacted a greater toll on their overall health. National indicators show that persons representing diverse racial and ethnic populations are disproportionately represented in both adult and juvenile justice systems. Studies also show that there are few if any differences in the nature and scope of crimes committed by persons of diverse racial, cultural and ethnic populations in comparison to their Caucasian counterparts. Yet the rates of arrest, prosecution, and incarceration, as well as their length of sentences are substantially higher for persons of diverse backgrounds.

The implications of these findings suggest that persons representing diverse backgrounds who also have a mental illness are denied the opportunity to access mental health treatment to an even greater extent because they are far more frequently punished in justice systems (which offer little or no treatment for mental illness) as opposed to treated in comprehensive culturally competent mental health systems. For youth in justice systems, these disparities are even more striking. Studies show that youth from diverse racial and ethnic populations are overrepresented in the juvenile justice system and experience substantially higher rates of mental health disorders than youth in the general population.^{vi}

People with mental illnesses are repeatedly arrested for petty offenses. Fewer than 5 percent of jails polled nationwide in 1992 had procedures to divert inmates with mental illnesses from the criminal justice system into the mental health treatment system. The extraordinary cost of the criminal justice system argues strongly that effective diversion may produce better results at a lower cost.

The problem of mental illness among the population of persons in the nation's jails and prisons is serious and is growing. In New York State, a five-year 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.^{vii} In many cases, individuals have been incarcerated for minor offenses such as trespassing, disorderly conduct and other symptoms of untreated mental illness.

There is now widespread concern regarding the unmet needs of persons with mental illness in the nation's jails and prisons 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: More effective measures must be taken to prevent these individuals from entering the nation's jails and prisons in the first place, and probation personnel need to be specially trained to deal effectively with the issues of mental illness, particularly as it effects diverse cultural, racial, ethnic populations, and in collaboration with mental health agencies. The consequences of maintaining the status quo are expensive and dangerous.

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Need for 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 and prisons and 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 and prison space available for violent offenders; to provide judges and prosecutors with alternatives to incarceration; and to reduce the social cost of providing inappropriate mental health services or no services at all. The success of diversion programs in communities across the country is generating genuine excitement and hope that real progress can be made in meeting the challenge of criminalization.

Studies show that diversion of persons with mental illness accused of misdemeanor crimes into appropriate, community-based mental health treatment programs reduces recidivism and contributes to better long-term results for offenders.^{viii} NAMHPAC recognizes that the development of diversion programs involves negotiation between the mental health system, public defenders, prosecutors, court personnel and others in the criminal justice system.

There are two major kinds of jail diversion programs: pre-arrest and post-arrest.

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

Pre-arrest strategies typically focus on the police officers that 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 helping police become knowledgeable regarding the nature of mental illness, provide tools to de-escalate crisis situations, and provide 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 provides assistance and support to police and the individual; and transportation to mental health treatment rather than jail. Cultural competency is a critical component of such training, to avoid the unequal treatment that comes from stereotyping racial and cultural groups. Communications through language and empathy are key to assuring equal access to diagnosis, treatment and diversion, in spite of the multiple stigmas to which person representing diverse cultural, racial, and ethnic populations accused of crimes are subject.

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 dismissal.

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.

Avoid Coerced Treatment

The key issue with the use of post-booking supervision for persons with serious mental illness or co-occurring disorders is that of coercion. In the case of someone with mental illness or co-occurring disorder, it is critical that he or she is able to direct his or her own recovery and to deal with side effects of treatment. Probation supervision is often lacking and, when it occurs in relation to a person with serious mental illness or co-occurring disorder (usually after a crisis), it often occurs to the detriment of the treatment process. With the new understanding of the role of recovery in successful mental health treatment, NAMHPAC is concerned that the criminal justice system is becoming a substitute for the system of community-based treatment that mental health planning councils and advocates have consistently sought. Probation can be a life sentence, with ongoing supervision and revocation of probation whenever there is a relapse. The sense of dependency and helplessness that comes from this kind of criminalization is at the core of the need for effective diversion.

Criminal justice programs that require a plea of guilty in order to gain access to appropriate treatment increase stigma and are inappropriate.

Need for Genuine Diversion

Mental health treatment is essential after a conviction to deal with symptoms of serious mental illness or emotional disorder. But such treatment is a poor substitute for genuine diversion. Diversion from incarceration is important, whenever possible, since incarceration can substantially exacerbate symptoms of mental illness. But diversion from the criminal justice system is a far more powerful idea to combat further criminalization of persons with serious mental or emotional disorder.

Dismissal of Charges

NAMHPAC believes that successfully completed pre-booking and post-booking diversion programs should both provide for dismissal of criminal charges. In the case of post-booking diversion, jeopardy of re-involvement in the criminal justice system should be limited in accordance with the criminal justice standards in that jurisdiction. As a guideline, conditions of deferred sentence or probation ordinarily should not exceed one year.

Implementing Effective Diversion Strategies

Resources

Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. More screening and treatment resources are desperately needed. NAMHPAC recommends that mental health planning and advisory councils help to assure that communities develop services that meet the needs of mental health consumers. This may involve significant increases in public investment and service integration across public and private agencies. Individual treatment plans should be focused on consumer recovery and choice and should include: mental and physical healthcare, case management, appropriate housing, supportive education, integrated substance abuse treatment, and psychosocial services, in the least restrictive environment possible.

Coalitions

Since diversion programs require the development of community coalitions, mental health planning councils can encourage the development of partnerships between criminal justice, mental health and substance abuse treatment agencies. Joint mobile outreach services such as crisis intervention teams are a key element in successful partnering between mental health and law enforcement agencies, with effective diversion to an appropriate treatment plan the critical measure of success. Consumers of mental health services and family members affected by mental illness need to be included in such coalitions to assure that the real barriers to effective mental health treatment in that community are addressed.

These community coalitions need to reach out to all criminal justice system personnel and ensure that training is provided at all levels to deal with issues of mental illness, wherever and whenever they occur. Effective diversion from the earliest point of contact with the criminal justice system of a person with serious mental illness or serious emotional disorder should be a centerpiece of all mental health planning, with the aim of promoting recovery from serious mental illness and as an end to all unnecessary use of criminal sanctions.

ⁱAllen J. Beck, Jennifer C. Karberg, “Prison and Jail Inmates at Midyear 2000,” Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000.

ⁱⁱU.S. Department of Health and Human Services, “Mental Health: A Report of the Surgeon General.” Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999.

ⁱⁱⁱPaula M. Ditton, “Mental Health Treatment of Inmates and Probationers,” Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. 1999.

^{iv}Bureau of Justice Statistics, “Correctional Populations in the United States 1997,” Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1997.

^vR.K. Otto, J.J. Greenstein, M.K. Johnson, and R.M. Friedman. Prevalence of Mental Disorders among Youth in the Juvenile Justice System. Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by J.J. Cocozza, Seattle, W.A.: The National Coalition for the Mentally Ill in the Justice System, pp. 7-48, 1992..

^{vi}Paula M. Ditton, Mental Health Treatment of Inmates and Probationers, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1999.

^{vii}Judith F. Cox, Pamela C. Morschauer, Steven Banks, James L. Stone, “A Five-Year Population Study of Persons Involved in the Mental Health and Local Correctional Systems,” *Journal of Behavioral Health Services and Research* 28:2, , pp. 177-87, May 2001.

^{viii}Center on Crime, Communities, and Culture, 1996.