

Supporting Vulnerable Populations: Civil Interventions and Diversion for Those with Mental Illness



A Pandemic Resource from NCSC

Developed in collaboration with the National Judicial Task Force to Examine State Courts' Response to Mental Illness
July 30, 2020 | Version 1.0

During the exigency of an individual experiencing a mental health crisis, a common response is to call 911. This invocation of the criminal justice system is often harmful to the person in crisis, but particularly so during this pandemic. While there is some evidence that law enforcement may now be more amenable to not taking individuals into custody because of infection related concerns and jail restrictions, a significant number of these interactions still result in the individual experiencing a mental health crisis being transported to a hospital or a jail.

Hospital emergency departments are appropriate destinations in some circumstances, but in today's environment of often vastly overstressed health care systems, those in mental health crises are more likely than ever to be exposed to an infectious disease, experience psychiatric boarding (extended waits, without mental health treatment, for a suitable psychiatric placement), or be discharged without any transition to mental health care.

Transport to a jail is also appropriate in some circumstances, but many jails have booking restrictions that preclude taking arrestees with non-serious charges. While book-and-release may be appropriate for some, people experiencing a serious mental health crisis are nonetheless likely to be released out the front door of the jail with no connection to transportation, medication, or other needed care. Those who are incarcerated face an extreme risk of infection. Seriously mentally ill individuals also face a potentially debilitating stay in jail waiting for an appropriate treatment placement. Many state psychiatric hospitals and other residential treatment facilities have either closed their doors to new admissions or imposed quarantine periods before admission.

A criminal justice system already ill-equipped to appropriately handle people with mental illness is made even less appropriate by the COVID-19 pandemic. This brief will describe non-criminal justice interventions that have been shown to be effective in increasing public safety while providing effective interventions to those in need, and will discuss ways in which courts can play a role in diverting people in crisis from entering or penetrating the criminal justice system. While no community has all of these alternative strategies and resources in place, now is the time to explore which

of these short-term improvements might be implemented now, and which longer-term strategies can be explored further.

Civil Court Alternatives

These alternatives directly invoke civil court jurisdiction. Some options may not yet exist in some courts, while others, such as guardianship, are ubiquitous, but courts can play a role in increasing the public's awareness of and access to these existing options.

A good example of effective public outreach is AZcourtcare.org, an online resource to help individuals “understand the treatment options for a person with a serious mental health disorder who is unable or unwilling to get help for themselves.” The site includes a description of the Arizona mental health system, access to civil court forms, and links to crisis service resources.

Promote advance directives

Advance directives are legal tools that allow individuals with mental health issues to articulate their treatment preferences prior to a mental health crisis. Advance directives can also be used for pre-emptive guardianship appointment, which allows an agent to give consent or make decisions on an individual's behalf concerning medical, mental health, and financial issues. When used appropriately, advance directives and guardianships protect the autonomy and preferences of individuals with mental health issues.

State laws govern the availability and legal structure of psychiatric advance directives, but at least 25 states now have specific laws authorizing their use. See SAMHSA's [A Practical Guide to Psychiatric Advance Directives](#) for more detailed information.

Increase awareness of and access to civil commitment where appropriate, including assisted outpatient treatment

Civil interventions are legal processes by which people other than the person with mental illness can initiate treatment and includes initiation of civil commitment proceedings and court-ordered treatment, including assisted outpatient treatment (AOT). Civil commitment processes and AOT do not require involvement of the police or the criminal justice system. Recently states have begun to provide for civil interventions for behavioral health conditions other than mental illness, including substance use disorders.

Court ordered treatment can be provided in the community or in an inpatient setting as determined by a clinical evaluation. Inpatient and outpatient treatment can be delivered sequentially or, alternatively, beginning with outpatient options and utilizing inpatient settings as needed.

AOT in some form is authorized by statute in 47 states and the District of Columbia but is unevenly implemented and not available everywhere it is

allowed. An excellent primer on AOT and its effective deployment is found in a recent NCSC Mental Health Facts in Brief, [Assisted Outpatient Treatment \(AOT\): Community-Based Civil Commitment](#).

SAMHSA's [Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice](#) outlines principles to guide appropriate civil commitment processes, but also includes practical tools to assist policy makers in evaluating, reforming, and implementing involuntary civil commitment.

Provide information about and easy access to guardianship resources

Guardianships give court designated individuals responsibility over a range of personal care decisions on behalf of someone the court determines is incapacitated, sometimes referred to as a ward. General guardianships give the guardian plenary decision-making authority for the ward.

Limited guardianships are preferred under most state laws, and delegate to the guardian only specific surrogate decision-making authority, based on a determination of specific areas in which the ward has impaired decision-making capacity. Guardianships can facilitate treatment and mitigate ancillary consequences that can result from neglected mental health care. Guardianship is subject to ongoing court oversight and typically requires regular reporting and check-ins.

In some states guardianship alone does not confer authority to make decisions about involuntary medication or psychiatric commitment. Separate processes may be needed in order to address these more intrusive measures. An overview of guardianship implementation and options can be found in NCSC's [Establishment of Guardianships](#) resource and at [The Use of Conservatorships and Adult Guardianships and Other Options in the Care of the Mentally Ill in the United States](#).

To the extent possible, civil intervention resources for unrepresented litigants should be made available online, and publicized. Traditional legal clinics, in-person court information opportunities, and other in-person resources are less available during a pandemic, so virtual self-help and court information options should be maximized, especially as they relate to needed civil court mental health crisis interventions.

Virtual hearings are the norm now in many jurisdictions, and remote behavioral health services are also now used at unprecedented levels. For more on virtual hearings best practices and remote treatment options, see NCSC's [Use of Telephonic and Video Conferencing Technology in Remote Court Appearances](#) and [Providing Court-Connected Behavioral Health Services During the Pandemic: Remote Technology Solutions](#).

All of these civil options are even more important now because of the heightened risk to people with mental illness –

- risk of decompensation due to reduced access to services and treatment,
- risk of arrest because of a greater lack of other community resources during the pandemic,
- risk of incarceration because of that same lack of alternatives,
- risk of prolonged incarceration because of quarantine requirements,
- risk of prolonged incarceration because of bottlenecks at inpatient and outpatient treatment resources, and
- risk of infection in jails and residential treatment settings.

These heightened risks justify courts committing staff and judicial resources to these alternatives, including giving these cases expedited calendaring consideration, whether those calendars be in-person or virtual.

Diversion from the Criminal Justice System

Diversion strategies are often not ones that courts can implement, at least not on their own. But courts and judges can and should convene stakeholders and participate in, if not lead, the development of these options. A detailed resource for court and judge leadership in this context is the NCSC publication [Leading Change: Improving the Court and Community's Response to Mental Health and Co-Occurring Disorders](#).

Crisis Services

Crisis services include the universe of resources available to individuals who are undergoing a mental health crisis. This can include stabilization units, mental health hotlines, mobile crisis units, and residential units. A strong presence of supportive resources at this stage can reduce the number of law enforcement contacts with individuals who have mental health issues. It is important that stakeholders and the public know of these services and that they are affordable and accessible. Some specific examples and further resources include:

- **Regional Crisis Call Center:** Regional 24/7 clinically staffed hub/crisis call center that provides crisis intervention capabilities (telephonic, text and chat). Such a service should meet National Suicide Prevention Lifeline (NSPL) standards for risk assessment and engagement of individuals at imminent risk of suicide and offer quality coordination of crisis care in real-time.
- **Crisis Mobile Team Response:** Mobile crisis teams available to reach any person in the service area in his or her home, workplace, or any other community-based location of the individual in crisis in a timely manner.
- **Crisis Receiving and Stabilization Facilities:** Crisis stabilization facilities providing short-term (under 24 hours) observation and crisis stabilization services to all referrals in a home-like, non-hospital environment. (See

SAMHSA's [National Guidelines for Behavioral Health Crisis Care – A Best Practice Toolkit](#))

Mobile Crisis and Co-Responder Teams

Mobile crisis teams are a law enforcement and mental health co-response to crisis situations in the community. Mobile teams may be housed within law enforcement or include team members from law enforcement and other mental health agencies. Mobile teams have been found to reduce incidents of arrest and psychiatric hospitalization.

- **Mobile Crisis Teams** The mobile crisis team is a group of mental health professionals who are available to respond to calls for service at the request of law enforcement officers. The mobile crisis team's goal is to divert individuals from unnecessary jail bookings and/or emergency rooms. (See [BJA and Police Mental Health Collaboration Toolkit](#))
- **Co-Responder Teams** Co-responder models vary in practice, but generally involve law enforcement and clinicians working together in response to calls for service involving a person experiencing a behavioral health crisis. The model provides law enforcement with appropriate alternatives to arrest as well as additional options to respond to non-criminal calls. (See the PRI and National League of Cities publication [Responding to Individuals in Behavioral Health Crisis via Co-Responder Models: The Roles of Cities, Counties, Law Enforcement, and Providers](#))

First Responder Training

First responder training includes dispatcher training, specialized police response, mental health first aid, and training for EMTs and other first responders. An example is Crisis Intervention Training (CIT). CIT focuses on identifying signs of mental health disorders, de-escalating a situation that involves those signs, and connecting people to treatment. The importance of crisis training has increased in recent years as a way to avoid escalation into the use of force, and as a way to reduce arrests and penetration into the criminal justice system. (See [Crisis Intervention Team \(CIT\) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises](#))

Court-Based Behavioral Health Diversion Strategies

Court-based behavioral health diversion interventions focus on connecting people with needed community-based care, usually after someone with mental illness, substance use disorder, or both, is booked into jail. These connections, which may be provided at a person's initial court appearance or at subsequent court appearances can be done through programs operating in a court or prosecutor's office or as a pre-plea component of an existing problem-solving court (e.g., drug courts and mental health courts).

While the diversity of diversion programs across the U.S. makes conclusive statements about outcomes difficult, research has shown that court-based diversion can shorten average length of jail stays and increase connections to treatment and supports without additional risk to public safety. Some programs have also been shown to reduce future criminal justice involvement. There are also studies showing how diversion programs can potentially save the criminal justice and behavioral health systems money. (See CSG's [A Look into Court-Based Behavioral Health Diversion Interventions](#)).

Some of these strategies include:

- developing formalized, written cooperative agreements between the key diversion program stakeholders,
- administering screening and assessments as early as possible in criminal justice proceedings to ensure that all people with behavioral health needs are identified and assessed to determine whether they are eligible candidates for diversion,
- establishing information-sharing protocols,
- initiating relationships with behavioral health treatment providers and support services in the community, and
- determining appropriate adaptations to court operations, such as designated calendars for diversion cases.

Research tells us that for the vast majority of people with mental illness, the criminal justice system is ill equipped to respond to their behaviors and needs, and that in fact such intervention usually does harm. The constraints created by the current pandemic only exacerbate the inappropriateness of most criminal justice system responses and increase the likelihood of lasting harm to those with mental illness. Diversion from criminal processes is ideal, and recalibrating criminal justice system responses in the ways described is the next best option.