

A microscopic image of neurons, showing a complex network of cell bodies (soma) and branching processes (dendrites and axons) in shades of teal and blue. The neurons are interconnected, forming a dense web of biological structures.

Leading Change Guide

FOR STATE COURT LEADERS

AN INTERIM REPORT FROM THE NATIONAL JUDICIAL TASK FORCE
TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS



This report was developed and approved by the Education and Partnerships Work Group of the National Judicial Task Force to Examine State Courts' Response to Mental Illness in June 2021 and is pending action by the Task Force Executive Committee. Reactions, comments and suggestions to the report are welcome. It is anticipated that a final version of this report and related recommendations will be adopted and published by the Task Force prior to the Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators in August 2022.

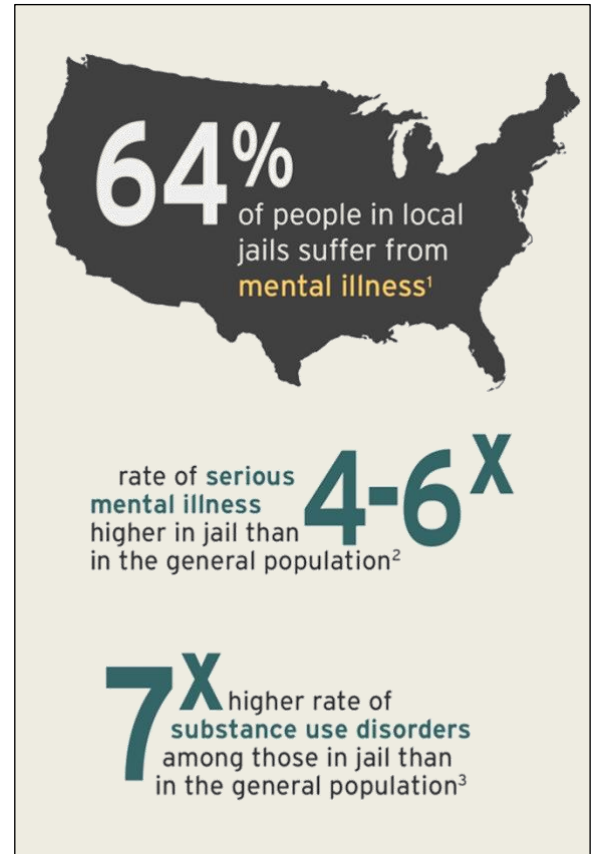
July 2021

Introduction

State courts have increasingly become the default system for addressing the needs of those with behavioral health issues. Sixty-four percent of people in local jails suffer from mental illness.¹ The rate of serious mental illness is four to six times higher in jail than in the general population,² and the rate of substance use disorders is seven times higher among those in jail than in the general population.³ A continued failure to respond to these issues invites a continuing public health crisis and the continued criminalization of behavioral health disorders that has devastating effects to individuals, families, and society.

Mental health advocate Judge Steve Leifman asserts that the “justice system is a repository for most failed public policy.”⁴ Over 57 percent of adults with mental illness did not receive mental health treatment in the previous year. Without access to social services, the answer to a mental health crisis is often law enforcement and justice system involvement, which can have broad-reaching and lasting implications. Incarceration negatively affects mental health outcomes, housing stability, employment, and community integration. A robust community response can prevent justice system involvement, recidivism, and the associated negative outcomes for many individuals with mental health issues.

As leaders of their courts and communities, judges are in a unique position to expand and improve the response to individuals with mental illness. The Conference of Chief Justices and Conference of State Court Administrators recognized the critical role of judges as leaders on this issue in Resolution 11, *In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative*, a national initiative co-chaired by Judge Leifman that includes as members judges and psychiatrists from across the country.⁵ For decades, courts have gained experience in convening diverse stakeholders to tackle complex problems both within and outside of the justice system. From the evolution of problem-solving courts to dependency dockets, courts are often at the vanguard of responding to societal issues. This reality has paved the way for an independent but involved judiciary. At the national level, state court leadership has recognized the important role courts play in addressing the mental health crisis. The Conference of State Court Administrators (COSCA) has adopted the stance that “court leaders can, and must... address the



¹ The White House, *Fact Sheet: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration* (June 30, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle>

² Vera Institute of Justice, *Incarceration's Front Door: The Misuse of Jails in America* (February 2015), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/01/>

³ The Council of State Governments Justice Center, *The Justice and Mental Health Collaboration Program (JMHC) FAQs*, <https://csgjusticecenter.org/substance-abuse/faqs/%23q2>

⁴ Judge Steve Leifman is an associate administrative judge on the county criminal division of the Eleventh Judicial Circuit Court of Florida and is the Special Advisor on Criminal Justice and Mental Health Reform for the Supreme Court of Florida, <https://www.jud11.flcourts.org/Judge-Details?judgeid=735§ionid=97>

⁵ Conference of Chief Justices, *Resolution 11: In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative*, 2006 <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01182006-In-Support-of-the-Judicial-Criminal-Justice-Mental-Health-Leadership-Initiative.ashx>

impact of the broken mental health system on the nation’s courts—especially in partnership with behavioral health systems.”⁶

An effective response to the needs of individuals with mental health and co-occurring disorders requires committed stakeholders across a spectrum of services and time. From screening and assessment to diagnosis, emergency health responses, probation and beyond, effective mental health responses must be appropriately tailored to the individual as well as available services in the community. This leading change guide is intended to be a practical tool for convening stakeholders across systems and developing a plan to address mental health needs in your state.



Over 70 percent of individuals with serious mental illness in jails also have a co-occurring substance use disorder. As such, this guide can and should be extended to those individuals with co-occurring disorders. In fact, this guide should be applied to the full spectrum of individuals with mental health issues, from those with emerging mental health concerns to those with serious mental illness. A comprehensive response must also consider the role of trauma, traumatic brain injury, and developmental disabilities. In addition, court leaders should contemplate how to address the intersectionality between mental illness and special populations, such as juveniles, emerging adults, women, people of color, veterans, and those who are LGBTQ+.

Court and behavioral health structures differ between states, but the advice in this guide is designed to apply universally. This guide focuses on state-level policies and systems, but also on how those policies and systems can facilitate and institutionalize change at the local level. The recommended checklist of action steps incorporates plan development considerations across a diverse set of jurisdictions. While these action steps provide a framework, specific strategies will vary from state to state depending on your existing behavioral health landscape, current coordination efforts, and available resources and resource infrastructure.

Addressing the mental health needs in your state is an important but weighty undertaking that will require sustained effort and time. Resources are often siloed, and it will take time to identify and then coordinate them. In their unique position as respected leaders, judges are optimal conveners of these diverse stakeholders. This guide will help judges and court administrators start the process if it has not yet begun, and advance processes that may already be underway. While local courts and communities should consider the companion resource *Leading Change: Improving the Court and Community’s Response to Mental Health and Co-Occurring Disorders*,⁷ this guide is intended to assist Chief Justices, State Court Administrators and other state level court officials develop strategies for statewide implementation of system improvements and take those improvements to scale.

⁶ Conference of State Court Administrators, *Decriminalization of Mental Illness: Fixing a Broken System*, 2017 <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/2016-2017-Decriminalization-of-Mental-Illness-Fixing-a-Broken-System.ashx> COSCA expressly advocates for “1) an Intercept 0 capacity based standard for court-ordered treatment as used in court-ordered treatment of other illnesses to replace the dangerousness standard now applied, 2) Assisted Outpatient Treatment (AOT) under a capacity-based standard, and 3) robust implementation of Intercepts 1 through 5 of the Sequential Intercept Model.”

⁷ https://www.ncsc.org/_data/assets/pdf_file/0024/36492/Leading_Change_Guide_Final_4.27.20.pdf

The Task Force

The National Judicial Task Force to Examine State Courts' Response to Mental Illness was established by the Conference of Chief Justices and the Conference of State Court Administrators in 2020. The charge to the Task Force is to “assist state courts in their efforts to more effectively respond to the needs of court-involved individuals with serious mental illness.” The structure and focus of the Task Force⁸ mirror many of the recommendations in this guide.

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The membership of the Task Force includes judges in leadership positions, including Chief Justices, court administrators, psychiatrists and other behavioral health professionals, people with lived experience, law enforcement and jail officials, community supervision providers, behavioral health data specialists, prosecutors, defense counsel, interested community members, and judicial educators. The perspectives brought by this broad membership are crucial to the development of sound, workable, integrated system improvement strategies. Likewise, the prioritized topics for examination by the Task Force likely resonate with many states:

- The state laws and procedures involving competency to stand trial require attention. Tens of thousands of defendants charged with misdemeanors or non-violent felonies are languishing in jail while awaiting a state hospital bed or community restoration, often waiting longer than if sentenced for the original crime. Similarly, revision of state legal standards and processes for civil commitment and expanded use of Assisted Outpatient Treatment are needed.
- The level and quality of behavioral health treatment available to state courts is lacking in many communities, as well as opportunities to divert cases involving individuals with serious mental illness. The expansion and strengthening of court-based programs, such as mental health and other problem-solving courts, is also an important priority.
- More timely and efficient caseload management for the cases involving parties with behavioral health needs and the use of technology to increase speed and expand access are of critical importance.
- Promoting education to equip state court judges and professionals with the knowledge, data, and resources they need to improve the courts' responses and the development of a national education and training curriculum to support that effort are required.
- Finally, there is need for a thorough review of all state court interactions with individuals who have serious mental illness and of all future work and activities of the Task Force through the lens of and concern for racial justice.

⁸ https://www.ncsc.org/_data/assets/pdf_file/0024/58704/NJTF-Brochure.pdf

Leading Change

Achieving lasting system change is not easy. It requires a sustained commitment to several aspects, or strategies of change, simultaneously:



Developing State-Level Cross-Sector Collaboration for Change All system players have to be involved and invested in the change. Opposition, or even inertia, by any one of the major components of the system makes real progress much more difficult. If all interested parties are at least at the table, collaboration is much more likely.



Supporting Progress/Change in *all* Trial Courts State level leaders in each of the relevant organizations need to communicate active support for change at the local level. Pilot programs and local experiments are useful to prove concepts and model new approaches, but comprehensive system change requires all local entities, including trial courts, to adopt consistent values and practices.



Supporting Cross-Sector Collaboration for Change with Trial Courts in all Jurisdictions State leaders need to model and project collaboration. Local entities need to see and believe that change is expected throughout the system.



Advancing State Legislative and Policy Changes to Support Change

Many aspects of the system improvement can be accomplished with changes in practices, reallocation of resources, and rule changes, but some will require statutory amendments. Redirecting legislative policies often takes more than one try, and usually requires collaborative efforts. Non-governmental advocates should be engaged and included from the outset to ensure consensus around policy recommendations at the end.

The following checklist of actions within each strategy should be viewed as a framework for your state to consider, and to modify given your state's leadership structure, existing relationships, and related initiatives.

Strategy One



Developing State-Level Cross-Sector Collaboration for Change

- Identify leaders of state level organizations that have interest in this issue.** Examples include the Association of Counties, Sheriff’s Association, other judicial organizations, Department of Behavioral Health, Medicaid Director, Drug Court/Problem Solving Court Association, Behavioral Health Provider Association, Hospital Association, State Psychiatric Hospital Director or Clinical Director, private foundations and advocacy groups, such as the National Alliance for the Mentally Ill (NAMI), peers and organizations that represent people with lived experience, the state’s Protection and Advocacy for Individuals with Mental Illness, Executive Branch Criminal Justice Commission, legislators, related state level social services officials (employment, housing, and other benefits agencies), etc.⁹ Terminology and service structures vary from state to state, so this list should be reviewed by all stakeholders to see who else needs to be consulted about their interest. Eventually this list of stakeholders should form the invitation list for a state-level group to consider and then advocate for system change. It is important that this list of stakeholders include a broad spectrum of voices, including those who may oppose some of the proposals if the eventual changes are to be institutionalized.
- Identify any existing state level workgroups that are already addressing this issue** There are likely groups already in existence that are examining parts of the behavioral health and/or criminal justice systems.¹⁰ These groups can be valuable sources of expertise and energy, and including them or a representative is often productive for the larger effort. If there is already a state-level entity addressing the intersection of mental illness, co-occurring disorders, and the justice system, it may be useful to compare the scope of that effort with the issues discussed in this Guide and to advocate for additional areas of attention if they are missing.
- Reach out individually to counterparts and see if they would be interested in collaboration to support progress locally, and advocacy at the state level** This is the convening role of the judiciary, and specifically of the Chief Justice. Courts are often in a unique role of having no “dog in the fight” other than seeking to ensure successful outcomes for those involved in the civil and criminal justice systems. Chief Justices can often bring stakeholders to the table who might otherwise not participate, and judges are often adept at creating inclusive processes that are, and are perceived as, fair.

⁹ The [Leading Change Guide](#) for local jurisdictions has a comprehensive list of potential local stakeholders at p. 10, and many of those stakeholders have state-level counterparts that should be considered for inclusion in this group.

¹⁰ Some such groups are initiated by the judiciary, such as [Arizona's](#) and [California's](#), some by the Governor or executive branch, as in [Maryland](#) and [Ohio](#), and some by the legislature, as in [Virginia](#) and [Washington](#).

- Reach out to be invited to any state level workgroups that seem relevant** Despite the fact that in many states the courts are the leading source of referrals to behavioral health treatment, courts are sometimes not included in workgroups that are direct service oriented, or that involve typically executive branch functions. As a co-equal branch of government with a significant stake in the effective provision of behavioral health services, courts should be included in relevant discussions.
- Schedule individual meetings with peer leaders if necessary, and in those meetings with a corresponding leader:**
 - Share your efforts in Strategy Two (Supporting Progress/Change in all Trial Courts)**
 - Ask if you can help encourage collaboration from any of your courts** Sometimes we (courts) are part of the problem. Whether because of a lack of awareness or education about these issues, or as a result of a philosophical aversion to this more recent role of judges as more than just “referees,” courts and judges can be the reason change is not happening. We need to acknowledge when that is the case, and commit to address the issue if we expect others to do the same.
 - Ask if they would like help engaging their local counterparts in the community effort** Offer the convening authority of local judges, and the leading change processes described in the Leading Change Guide.
 - Ask if you can include them in any joint communications** Early public examples of collaboration and consensus can go a long way toward galvanizing policy perspectives and initiating system change.
 - If there is not an existing opportunity for regular meetings with all stakeholders at the state level, see if there is interest in creating such a meeting.**
- Work toward either forming such a state level group, or joining a state level group** Several states have convened broad, inclusive groups, as commissions, committees, task forces – by whatever name, they have generally been very effective in instigating real change. Chief Justices play varying roles, sometimes as chairs of the group, but more often as co-chairs along with leaders in other branches of government. Whatever structure fits the culture in your state, the important step is the first one, to convene the group. Beyond that, court leaders, whether the Chief Justice directly or through designees, needs to continue to participate actively and engage in the substance of the discussions.
- In the group, share efforts in Strategy Two (Supporting Progress/Change in all Trial Courts) and offer to report regularly** Model active engagement and collaboration at the local level, if that is happening. This is where innovative pilot programs and the involvement of particularly engaged local judges can be highlighted.
- In both individual and group meetings, identify next steps for Strategies Three (Supporting Cross-Sector Collaboration for Change with Trial Courts in all Jurisdictions) and Four (Advancing State Legislative and Policy Changes to Support Change)**

Strategy Two



Supporting Progress/Change in all Trial Courts

- Share the Leading Change guide for local jurisdictions,¹¹ Behavioral Health Resource Hub,¹² and other Task Force resources¹³ with all courts** The resource hub is a continuously updated compilation of resources, organized by SIM intercept.¹⁴ Local court judges and staff can get an overview of relevant issues, or they can delve more deeply into the source materials to inform their local decisions. Pointing courts and other system partners to a common resource avoids confusion about best practices and fosters a common understanding of issues.
- Communicate the coordinated state level intent to help each court make progress** If courts and judges believe their efforts will be supported, their commitment to that change will be enhanced.
- Identify your court behavioral health staff support and resources for statewide change efforts and designate an expert, single point of contact** Having a single point of contact at the state courts promotes consistent communication and coordination and increases the courts' capacity to more appropriately lead efforts to improve system responses. That person should have frequent and direct contact with state court leadership, and with any state level cross discipline oversight group. Idaho and New Mexico have created new state level behavioral health coordinator positions in their Administrative Offices of the Courts, and almost every state also has a problem-solving court coordinator, who can also support that coordination role. This person needs to be proficient and conversant on both behavioral health and court practices.
- Convene meeting(s) of Court Leadership to discuss reasons, goals, and steps** System change that crosses multiple systems and localities requires consistent coordination and communication.
- Facilitate each jurisdiction using the Leading Change Guide and Behavioral Health Resource Hub to identify best practices and to self-assess gaps and progress**
 - Is there a stated intent to improve the behavioral health and court interface in the community?
 - Is there an identified, energetic change leader?
 - Are there regular meetings of partners? Are any partners missing or disengaged?
 - Is there engagement with Stepping Up?
 - Has a Sequential Intercept Mapping occurred at the local or regional level?

¹¹ https://www.ncsc.org/_data/assets/pdf_file/0024/36492/Leading_Change_Guide_Final_4.27.20.pdf

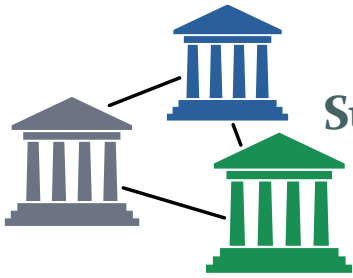
¹² <https://mhbb.azurewebsites.net/>

¹³ <https://www.ncsc.org/behavioralhealth>

¹⁴ Policy Research Associates, Inc., Sequential Intercept Model, <https://www.prainc.com/sim/>

- Is behavioral health screening occurring at multiple points in the process? Are those data shared with partners?
 - Identify improvement activities:
 - At each intercept
 - Distinguish pilot or small programs versus an initiative that is taken to scale
 - Identify challenges with other stakeholders, including the availability of clinical services
 - Identify challenges created by legislative or policy barriers
 - Identify next step goals and priorities for court and other stakeholders
-
- Review the findings with the group. Celebrate progress and successes. Identify those areas that the majority of courts already have addressed and establish those as expectations for all**
 - Work with each court to identify one or more short-term steps it can and will accomplish over the next several months** Make the steps small, measurable, and achievable.
 - Identify needed resources and state and local funding partners (including foundations, etc.) to support each court in making change** Avoid the short-term funding trap: The goal is to make better use of existing resources and use any new resources to leverage better performance of all resources, rather than primarily focusing energy on a grant that might create a small program to serve a limited number of people.
 - Develop a learning community across the courts, with more experienced courts mentoring those who are just getting started** This can be facilitated by experts at the state level, but peer to peer learning enriches both the mentors and mentees. This is also a successful way to institutionalize progress and change.
 - Create a process and template for regular updates and reporting across the Courts** Regular communication, particularly with reports of successful efforts, creates momentum among all of the courts and partners.
 - Repeat every six months, with updated self-assessment results and revised objectives**

Strategy Three



Supporting Cross-Sector Collaboration for Change with Trial Courts in all Jurisdictions

- In individual and group meetings, indicate a desire and expectation to have joint communications from state leaders to local partners. This is an opportunity for courts to model this vertical communication, but similar efforts on the part of all system partners is essential to initiate and sustain change efforts.
- Consider a collaborative self-assessment across partners in each jurisdiction. There are several system assessment tools available to identify gaps and suggest next steps. Examples include a Police-Mental Health Collaboration self-assessment tool,¹⁵ the Crisis Now crisis response system scoring tool,¹⁶ and the Community Behavioral Health Crisis System Report Card.¹⁷
- Use the self-assessments to identify collective next steps for all partners, building on Strategy One (Developing State-Level Cross-Sector Collaboration for Change)
- Move toward formulating a state-level strategic plan for change, in which each jurisdiction has its own team, own data, and own plan for progress, as well as some collective targets that all work to achieve statewide reforms
- Establish learning communities and policy academies that convene local groups of stakeholders, in addition to the learning communities for local court leaders. This is again an institutionalization and sustainability strategy. These joint educational opportunities also promote substantive collaboration.
- Seek collective funding for consultation, training and technical assistance, and project management. Many public and private funders require demonstration of cross-system collaboration and partnerships in order to be eligible for funding, and for good reason. Collaborative efforts often work better, and represent more effective and efficient uses of resources. While new resources may be needed and should be pursued, care should be taken to be sure that the lack of new money doesn't stop innovation and progress.
- Report regularly to the Governor, legislators, and other policy stakeholders on progress, as well as on barriers and needs (See Strategy Four). Early, meaningful engagement with state-level funders and policymakers leads to institutional investment in the success of the reform and creates personal champions in other branches of government.

¹⁵ Council of State Governments Justice Center PMHC Self-assessment tool, <https://csgjusticecenter.org/projects/police-mental-health-collaboration-pmhc/self-assessment-tool/>

¹⁶ <https://crisisnow.com/wp-content/uploads/2020/02/Crisis-Now-Assessment-Tool.pdf>

¹⁷ [Roadmap to the Ideal Crisis System](#), Group for the Advancement of Psychiatry, at p. 196

Strategy Four



Advancing State Level Legislative or Policy Change

- In both individual and group meetings with state partners, initiate a process to gather information from local leaders on needed changes in legislation and policy** For example, Medicaid benefits can and should be suspended and then promptly reinstated upon release from jail instead of benefits being terminated automatically upon incarceration in jail. This simple policy change has enormous impacts on being able to provide treatment continuity. While the impact of the default termination policy is likely unintended, it can be highlighted by providing opportunities for local providers to provide direct input to state-level policymakers about this and other policies.
- Reinforce in meetings with court leaders the need for all relevant requests for legislative and policy changes to come to the Supreme Court, Administrative Office of the Courts, or the state-level interagency coordinating group, as appropriate, so that they can “speak with one voice”** Nothing stops a policy or funding initiative faster than dissention or conflicting information. State and local partners, along with non-governmental advocates should jointly develop, present, and advocate for policy and resource requests.
- Analyze and prioritize the requests that come from the field, working with other state partners** Requests should be coordinated and prioritized in order to have maximum effect, and to have the greatest chance of being funded or approved.
- Create relationships with legislative leaders who are interested, and plan for briefings on this topic** Legislative champions are critical for long term success. They should be included early and involved as much as they are willing. Progress reports to committees, subcommittees, and caucuses are also important in order to create broad support.
- Create relationships with executive branch leaders as well** Hopefully executive branch leaders will be active participants on the interbranch oversight or coordinating group. Some states have the Governor’s office, if not the Governor, on that group as co-chair or members.
- Identify which requests are most actionable, and the types of information that would prove most useful in creating change** Early successes are important. Picking short term, achievable projects at the front end can demonstrate progress and momentum. This also tends to generate enthusiasm among participant partners, which leads to even greater project momentum.

- **Work with partners to identify priorities for action and supply needed data, using local examples from the work in Strategies One and Three (Supporting Cross-Sector Collaboration for Change with Trial Courts in all Jurisdictions).** Some people are persuaded by anecdotes and personal experience, others by data. Both should be identified, cultivated, and shared broadly.
- **Continue that cycle through multiple legislative sessions** Achieving sustainable system change is hard work and takes time. The greater the paradigm shift, the more time and effort it will take to accomplish. Incremental progress is progress nonetheless. Persistence over time will be rewarded.

In Conclusion

Courts have been thrust into the center of society's struggle with complex behavioral health resource and policy questions. To date, very few communities have successfully addressed the issue, and there are certainly no effective, comprehensive, coordinated state-level responses that have completely solved the problem, though there are a few promising statewide initiatives. State court leaders may not have asked for the role, but they now have a responsibility to become leaders in finding solutions to these issues. Research has identified promising and best practices, and state and local level initiatives have demonstrated the efficacy of those practices on the ground. It is now incumbent on court leaders to coordinate and help lead the statewide expansion and institutionalization of those solutions.

