Chapter 3. Alleviating the Impact of Social Problems on Public Safety

Overview

Crime is a complex issue that derives from a multitude of causes. While it is the principal duty of law enforcement to protect communities from crime, it is unrealistic and unworkable to expect law enforcement to manage the underlying social conditions—such as homelessness, mental illness, substance abuse—that motivate and accompany some criminal behavior. In its study of American law enforcement, the Commission has found that law enforcement has indeed borne the burden of the failure of and abdication by other public institutions better suited to address these and other social ills that afflict communities and drive crime. This has resulted in police officers and deputy sheriffs diverting a significant amount of time and effort to duties beyond their expertise, resources, and authority to remedy, which has ultimately diminished law enforcement's capacity to fulfill its core mission of public safety.

PULL QUOTE: "It has never been the intention nor the design for law enforcement to be the sole solution to address homelessness, drug addiction, or the mentally ill. . . . Law enforcement should not be the strategy or the first face of government these individuals encounter or rely upon for help; law enforcement should be the last form of government these people encounter, and only when the intervention efforts have failed, resulting in a criminal violation of law."[1] - Sheriff Don Barnes of Orange County, California

Many social ills (e.g. substance abuse) violate the law, but that does not mean that law enforcement is the only answer to the problem. Law enforcement alone is not a cure-all for criminal behavior, nor is it a substitute for valid behavioral health systems, and it cannot backstop social programs that do not adequately treat the predicate conditions of crime in the first place. Tasking law enforcement officers with these duties impairs the rule of law insofar as their duties become confused and fragmented, which can result in unwarranted blame directed at officers for problems they were never supposed to remedy. Effective law enforcement requires restoring officers to their fundamental duty of preventing and reducing crime.

However, unless and until state and local governments provide the investments necessary to support the work of non-law enforcement professionals, police officers and deputy sheriffs must be trained and equipped to handle the complex issues tied to homelessness, substance abuse and mental illness they now encounter on a daily basis. And while law enforcement will always have some role addressing social problems that are impacting public safety, the Commission, as discussed below, recommends enhanced programs and systems to reduce the reliance on law enforcement to be the first provider of social services.

A look at three separate studies found that about 44 percent of jail inmates and 37 percent of prisoners were previously told they had a mental health disorder.[2] Sixty-one percent of sentenced jail inmates and some 54 percent of state prisoners incarcerated for violent offenses met the criteria for drug dependence or abuse.[3] And approximately 15 percent of those incarcerated had been homeless in the past year.[4] At the time of booking, the number of people in San Diego who reported being homeless in the last 30 days increased from 22 percent in 2014 to 39 percent in 2018; the number who reported being homeless at some point in the past increased from 60 percent in 2014 to 66 percent in 2018.[5]

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[1] *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 25, 2020) (written statement of Don Barnes, Sheriff, Orange County Sheriff's Department, CA), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

[2] Jennifer Bronson and Marcus Berzofsky, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011–2012* (Washington, DC: Bureau of Justice Statistics, 2017), 1, https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf.

[3] Jennifer Bronson et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009* (Washington DC: Bureau of Justice Statistics, 2017), 27, https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf.

[4] Greg A. Greenberg and Robert A. Rosenheck, "Jail Incarceration, Homelessness, and Mental Health: A National Study," Abstract, *Psychiatric Services* 59, no. 2 (2008), https://doi.org/10.1176/ps.2008.59.2.170.

[5] "Homelessness Among Justice System-Involved Individuals in San Diego County," *CJ Flash* 21, no. 9 (2019), https://www.sandag.org/uploads/publicationid/publicationid_4631_26706.pdf.

Responding to and transporting those with mental illness accounts for an estimated 21 percent of a law enforcement officer's total time, which is staggering.[6] Sergeant Sarah Shimko of the Madison Police Department in Wisconsin noted that her department investigated 44,623 distinct cases in 2019.[7] Among those, nearly 10 percent (4,275) had an element that involved mental health, and law enforcement officers spent approximately 33,895 hours addressing those cases. In calendar year 2019, the Orange County Sheriff's Department in California devoted approximately 11,600 hours to homeless-related calls for service, the equivalent of 6.5 patrol deputies working full time on these kinds of calls.[8]

The recommendations that follow in this chapter cover four points—the community, law enforcement, courts, and corrections—to address these social problems while easing the burden on law enforcement. They focus on rebuilding the community safety net of behavioral health treatment services to address such social problems at their roots, while simultaneously acknowledging that individuals in need still commit crimes and that officers will need to be equipped when called upon to respond to situations with individuals in crisis.

1.1 Rebuilding Behavioral Health Treatment Services in the Community

PULL QUOTE: "Since the mid-twentieth century, America has witnessed a reduction in targeted mental health treatment. Ineffective policies have left more individuals with mental health needs on our nation's streets, which has expanded the responsibilities of law enforcement officers." - President Donald J. Trump, Exec. Order No. 13,929[9]

Over the past 60 years, public policies have degraded the community's ability to understand, prioritize, and appropriately address mental illness, substance use disorders, and homelessness. One of the most significant impacts of these policies occurred in the 1960s with the shuttering (i.e., deinstitutionalization) of inpatient psychiatric treatment facilities. According to the *Psychiatric Times*, "In 1955 there were 558,239 state and county psychiatric beds available, or about 340 beds per 100,000 population. Currently, there are about 35,000 state psychiatric beds available, or about 11 beds per 100,000 population."[10] In addition to these closures, psychiatric drugs developed to treat many symptoms of mental illness became available, and concern for the civil rights of patients became more important—which helped reinforce the push toward outpatient care.[11]

"Unfortunately, deinstitutionalization was poorly organized and conducted without adequate build-up of supportive housing, social services, or outpatient community mental health infrastructure."[12] Many of those placed into communities became the least successful there. As addiction and mental illness are closely intertwined, the decrease in the community treatment options for mental health resulted in an increase in people with untreated mental illness and substance use disorders.

Additionally, in the 1970s, the public began to view drug use as a criminal justice problem instead of a

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[6] E. Sinclair, *Road Runners: The Role and Impact of Law Enforcement in Transporting Individuals with Severe Mental Illness, A National Survey* (Arlington, VA: Treatment Advocacy Center, 2019), 9, https://www.treatmentadvocacycenter.org/road-runners.

[7] *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 24, 2020) (written statement of Sarah Shimko, Sergeant, Mental Health Unit, Madison Police Department, WI), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

[8] Raymond Grangoff, Chief of Staff, Orange County Sheriff's Office, CA, email communication with Social Problems Impacting Public Safety Working Group, May 26, 2020.

[9] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

[10] E. Fuller Torrey, "A Dearth of Psychiatric Beds," *Psychiatric Times* 33, no. 2 (2016), https://www.psychiatrictimes.com/dearth-psychiatric-beds.

[11] Gregory G. Grecco and R. Andrew Chambers, "The Penrose Effect and Its Acceleration by the War on Drugs: A Crisis of Untranslated Neuroscience and Untreated Addiction and Mental Illness," *Translational Psychiatry* 9, no. 1 (2019), https://doi.org/10.1038/s41398-019-0661-9.

[12] Grecco and Chambers, "The Penrose Effect," 2. [13] Redonna K. Chandler, Bennett W. Fletcher, and Nora D. Volkow, "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," *Journal of the American Medical Association* 301, no. 2 (2009), https://doi.org/10.1001/jama.2008.976.

biomedical problem, while correctional settings had little to no capability to treat substance use disorders.[13]

The decrease in community behavioral health treatment and the increase in housing costs also factor into an increase in the homeless population.[14] Homelessness is often directly related to behavioral health disorders, physical health issues, and trauma, and the unsheltered homeless experience the worst health conditions and the longest period of homelessness.[15]

The longer one stays homeless, the more their health deteriorates.[16] Those who are mentally ill and reentering the community from correctional settings are especially high-risk of becoming homeless, as a criminal record makes it difficult to acquire housing or a job.[17]

As outlined in "The State of Homelessness in America" presented by the Council of Economic Advisors in 2019, homelessness may have many underlying factors, including the lack of affordable housing due to the overregulation of housing markets; street conditions that are more comfortable for sleeping when not sheltered (e.g., warmer conditions); the availability of shelter beds; and individual-level factors of behavioral health disorders, past incarceration, few social ties, and low income.[18] Increasing permanent and affordable housing would greatly benefit those who are most at risk of entering or reentering the criminal justice system: persons who are homeless and who suffer from severe mental health and substance use disorders.[19]

PULL QUOTE: "Being homeless is not a crime. Having mental illness is not a crime. Having substance use disorder is not a crime."[20] - Mike Brown, Chief of Police Salt Lake City, Utah

Steps have been made to improve the nation's community treatment capacity. Various pieces of legislation in recent years have included efforts to enhance mental health and substance use coverage, treatment capacity, and access to quality treatment in communities. For example, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) passed in 2018 was landmark legislation expanding the substance use treatment workforce and access to quality treatment. Yet there are still roadblocks. According to a report from the Centers for Disease Control and Prevention (CDC), "Despite state and community planning efforts, behavioral healthcare systems lack sufficient capacity for addressing the needs of the population they serve. These systems were developed in the midst of funding shortages, shifting healthcare priorities, and decentralized planning efforts. . . . As a result, community behavioral healthcare systems have gaps in comprehensive care and redundancy of resource allocation."[21] Additionally, inflexible privacy laws can deter patient-centered care if relevant information cannot be shared between providers. Updating the Health Insurance Portability and Accountability Act (HIPAA) to provide for basic information sharing among first responders, criminal justice practitioners, and service partners could further support successful outcomes.

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[13] Redonna K. Chandler, Bennett W. Fletcher, and Nora D. Volkow, "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," *Journal of the American Medical Association* 301, no. 2 (2009), https://doi.org/10.1001/jama.2008.976.

[14] Council of Economic Advisers, *The State of Homelessness in America* (Washington, DC: Executive Office of the President of the U.S., 2019), https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf.

[15] Janey Rountree, Nathan Hess, and Austin Lyke, *Health Conditions Among Unsheltered Adults in the U.S.* (Los Angeles, CA: California Policy Lab, 2019), https://www.capolicylab.org/wp-content/uploads/2019/10/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S.pdf.

[16] Rountree, Hess, and Lyke, *Health Conditions Among Unsheltered Adults.*

[17] "The Homeless Mentally Ill," *Harvard Health*, accessed June 4, 2020, https://www.health.harvard.edu/newsletter_article/The_homeless_mentally_ill.

[18] Council of Economic Advisers, *The State of Homelessness*.

[19] Andrew J Baxter et al., "Effects of Housing First Approaches on Health and Well-Being of Adults Who Are Homeless or at Risk of Homelessness: Systematic Review and Meta-Analysis of Randomised Controlled Trials," *Journal of Epidemiology and Community Health* 73, no. 5 (2019), https://doi.org/10.1136/jech-2018-210981.

[20] *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 31, 2020) (written statement of Michael Brown, Chief of Police, Salt Lake City Police Department, UT), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

[21] Brandon Green et al., "A Tool for Assessing a Community's Capacity for Substance Abuse Care," *Preventing Chronic Disease* 13 (2016), https://doi.org/10.5888/pcd13.160190.

Through the following recommendations, the Commission offers solutions to help address the nation's lack of treatment capacity through improving treatment availability, quality, and ease of access; increasing prevention; removing barriers to treatment; and reducing stigma and increasing education. This system should also be able to serve the needs of people involved in the criminal justice system.

1.1.1 State and local governments should implement or enhance co-located, comprehensive, one-stop-shop systems of care to screen, assess, and treat people with mental illness and substance use disorders that meets the demand of the community, including criminal defendants.

Through a comprehensive system of care, communities can respond to and serve persons in need before they interact with law enforcement, during their involvement with criminal justice professionals, or after reentering society from a correctional institution.[22] [23]

A local comprehensive system of care should include, but is not limited to, leadership; appropriate treatment capacity; professionals trained in evidence-based practices for appropriate screening, assessment, and treatment; availability of telehealth, particularly to support rural, tribal, and special populations; medications prescribed when appropriate (i.e., medication-assisted treatment (MAT)); integrated dual diagnosis disorder treatment for people with co-occurring substance use and mental health disorders; and sufficient funding to directly fund or reimburse services.[24]

[CROSS REFERENCE RURAL AND TRIBAL]

Various models currently exist that address these comprehensive needs in a coordinated way. One such model is the Certified Community Behavioral Health Clinics (CCBHC), which emphasize a wide range of services, including behavioral health provided in the community and correctional facilities, to treat the whole-person rather than disconnected parts of the person's needs.[25] CCBHCs have expanded access to care and increased the scope of services in the community to include those referred by the criminal justice system.[26]

Another model comes from the Office of Care Coordination in Orange County, California, which developed an integrated service plan for community corrections.[27] In reference to the Orange County jail, Sheriff Don Barnes says, "Sadly, this population of inmates often cycle in and out of custody multiple times throughout a

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[22] Interdepartmental Serious Mental Illness Coordinating Committee, *The Way Forward: Federal Action for a System That Works for All People Living With SMI and SED and Their Families and Caregivers* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), https://www.samhsa.gov/sites/default/files/programs_campaigns/ismicc_2017_report_to_congress.pdf.

[23] Emily Woltmann et al., "Comparative Effectiveness of Collaborative Chronic Care Models for Mental Health Conditions Across Primary, Specialty, and Behavioral Health Care Settings: Systematic Review and Meta-Analysis," *American Journal of Psychiatry* 169, no. 8 (2012), https://www.ncbi.nlm.nih.gov/pubmed/22772364; Center for Mental Health Services, *The Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances Program: Report to Congress, 2015* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), https://www.samhsa.gov/sites/default/files/programs_campaigns/nitt-ta/2015-report-to-congress.pdf.

[24] "The Center of Excellence for Integrated Health Solutions," National Council for Behavioral Health, accessed June 14, 2020, https://www.thenationalcouncil.org/integrated-health-coe/.

[25] Center for Mental Health Services, *Certified Community Behavioral Health Clinics Demonstration Program: Report to Congress, 2017* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), https://www.samhsa.gov/sites/default/files/ccbh_clinicdemonstrationprogram_071118.pdf; and U.S. Department of Health and Human Services, *Certified Community Behavioral Health Clinics Demonstration Program: Report to Congress, 2018* (Washington, DC: U.S. Department of Health and Human Services, 2019), https://aspe.hhs.gov/report/certified-community-behavioral-health-clinics-demonstration-program-report-congress-2018.

[26] National Council for Behavioral Health, *CCBHC Impact Survey* (Washington D.C: National Council for Behavioral Health, 2017), https://www.thenationalcouncil.org/wp-content/uploads/2019/09/National-CCBHC-Impact-Survey-FINAL-11-28-17.pdf?daf=375ateTbd56; and National Council for Behavioral Health, *How Community Behavioral Health Providers Are Supporting Police and Reducing Recidivism* (Washington D.C: National Council for Behavioral Health, 2019), https://www.thenationalcouncil.org/wp-content/uploads/2019/09/CCBHC-Criminal-Justice-Full-Report-4.13.18.pdf?daf=375ateTbd56.

[27] County of Orange Community Corrections System, *Integrated Services: 2025 Vision* (Orange County, CA: County of Orange Community Corrections System, 2019), http://cams.ocgov.com/Web_Publisher_Sam/Agenda10_22_2019_files/images/ATTACHMENT%20A_INTEGRATED%20SERVICES%202025%20VISION%20-LS_9853914.PDF.

single year. The integrated services plan is the solution to this destructive cycle that has impacted the safety of neighborhoods and put a drain on our existing resources."[28] This plan offers a road map as a model, laying out a vision for increasing the capacity and quality of care by 2025 for both the community and those who are referred to the criminal justice system.

1.1.2 State and local governments should develop multi-service centers to provide triage and connections to longer-term care for people with mental health disorders, with substance use disorders, and who are homeless.

Sergeant Sarah Shimko of the Madison Police Department notes, "Another gap in our community's continuum of crisis care is the lack of a single entry point crisis resource center. Law enforcement officers are tasked with navigating a complex and vast array of possible services and facilities in their attempts to reach the best possible resolution. They are often met with any number of barriers to connecting individuals in crisis with appropriate levels of support in their moment of need."[29]

These one-stop centers of centralized care can serve as crisis receiving centers while also providing other treatment and support services to those in the community.[30] Crisis stabilization centers improve mental health outcomes and alleviate strains on emergency departments.[31] Successful models are run by behavioral health agencies or hospitals who have direct access to providers and medications. Creating a receiving center for those who are experiencing homelessness or a mental health crisis offers both law enforcement and the community an alternative to jails and emergency rooms.[32]

The Crisis Response Center (CRC) in Tucson, Arizona—centrally located to collaborate with other local services—has a comprehensive approach that attempts to address every part of the crisis continuum: prevention, early intervention, response, and post-intervention services. Since its inception, the CRC has provided programs encompassing such services as peer-run wraparound services to pet therapy. Its crisis line relieves the burden from 911 and allows those in need to speak with someone who is specially trained to help them.[33]

The CRC works closely to serve the needs of the Tucson Police Department (TPD) by providing 24/7 access with minimal turnaround time and ensuring that there are no clinical barriers to care. The police department can refer or divert persons in need to the CRC, or patients can enter the CRC in other ways, including voluntary or involuntary admissions, walk-ins, or delivery through crisis mobile teams, law enforcement, or specialty courts. As Dr. Margie Balfour from the CRC explains, "We like the agitated people. We want them here."[34]

Strong multi-service centers are an indispensable partner to law enforcement and the criminal justice system. Rural areas should consider regional centers or parallel services using telehealth.

[CROSS REFERENCE RURAL AND TRIBAL]

1.1.3 Congress should eliminate Medicaid's institutions for mental disease exclusion and Medicaid's inmate exclusion policy.

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[28] County of Orange Community Corrections System, *Integrated Services: 2025 Vision*, 6.

[29] Shimko, *President's Commission on Law*, March 24, 2020.

[30] Center for Mental Health Services, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2020), https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf.

[31] Substance Abuse and Mental Health Services Administration, *Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), https://store.samhsa.gov/product/Crisis-Services-Effectiveness-Cost-Effectiveness-and-Funding-Strategies/sma14-4848.

[32] Substance Abuse and Mental Health Services Administration, *Crisis Services: Effectiveness*.

[33] Margie Balfour and Jason Winsky, "The Tucson Model's Comprehensive Approach to Crisis and Public Safety" (webinar hosted by Substance Abuse and Mental Health Services 's GAINS Center for Behavioral Health and Justice Transformation, April 22, 2020).

[34] Balfour and Winsky, "The Tucson Model's Comprehensive."

Medicaid defines an institution for mental disease (IMD) as a facility with greater than 16 beds that provides services to treat behavioral health disorders.[35] The Social Security Act Amendments of 1965, which created Medicaid, continued previous federal prohibitions of payments for IMD facilities in most circumstances. As a result, states have been responsible for the majority of treatment costs in IMDs and encouraged less intensive treatment options for individuals within the community. In 2018, Congress partially waived these restrictions to allow limited payment to IMD facilities as a comprehensive approach to opioid use disorder.[36]

D.J. Jaffe, executive director of mentalillnesspolicy.org and author of *How the Mental Health Industry Fails the Mentally Ill*, says, "The IMD Exclusion precludes states from receiving Medicaid for adults in state hospitals which forces states to close the beds. . . . When an officer wants someone admitted they sometimes sit in the ER for hours only to have the hospital overrule the officer or discharge the person before they are stabilized because of the lack of beds. They become 'round-trippers' and 'frequent-flyers.'"[37]

To ensure that all treatment options are available to those that need them, Congress should eliminate the Medicaid IMD exclusion. Furthermore, under Section 1905(a)(A) of the Social Security Act, inmates are not eligible to receive Medicaid. This prohibition prevents state governments from shifting the health care costs of convicted prison inmates to the federal health and disability programs. However, the language has a disparate impact on local jails holding inmates who are in pretrial detention. Persons in pretrial custody with a substance use or mental illness disorder (or both) have costly medical expenses that burden limited county resources. To reduce the burden on an already stretched correctional system and to reduce recidivism of those with substance use and mental health disorders, Congress should enact legislation that eliminates the applicability of this exclusion policy to local jails.

1.1.4 Local government leaders should develop and implement a formal data-informed collaboration of criminal justice, public health, and social service agencies to reduce the communities' unmet behavioral health treatment and homeless service needs.

Local government should develop solutions to collaborate on data collection and data-informed collaborations to optimize accountability and target resources to assess and understand the problem, and plan and implement collective evidence-based community-supported strategies, when possible.

For example Prince George's County, Maryland initiated CountyStat, a layered approach to addressing social problems and crime in the county—sharing and examining data across multiple agencies and guiding and coordinating initiatives to improve the quality of life for county residents. The core understanding of CountyStat is that law enforcement is not solely suited to address the county's social problems. Through data-driven performance measures, CountyStat holds government agencies accountable by focusing on key indicators and providing the agencies the tools to improve their own performance.[38]

CountyStat is currently part of an integrated services program focused on the needs of frequent users—those identified as "high-risk, high-utilizing Medicaid beneficiaries who have four or more emergency visits per year or have two or more chronic conditions—including mental illnesses and substance abuse disorders—and are at risk of institutional placement or homelessness following release from a publicly funded institution such as

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[35] Congressional Research Service, *Medicaid's Institutions for Mental Disease (IMD) Exclusion* (Washington, DC: Congressional Research Service, 2019), https://crsreports.congress.gov/product/pdf/IF/IF10222.

[36] Athena Mandros, "IMD Waivers Change The Behavioral Health Treatment Landscape – In Some States," *OPEN MINDS* (blog), December 12, 2019, https://www.openminds.com/market-intelligence/executive-briefings/imd-waivers-change-the-behavioral-health-treatment-landscape-in-some-states/; and Centers for Medicare and Medicaid Services, "CMS Announces New Medicaid Demonstration Opportunity to Expand Mental Health Treatment Services," Centers for Medicare and Medicaid Services, November 13, 2018, https://www.cms.gov/newsroom/press-releases/cms-announces-new-medicaid-demonstration-opportunity-expand-mental-health-treatment-services.

[37] DJ Jaffe, Executive Director, Mental Illness Policy Org., public comment to President's Commission on Law Enforcement and the Administration of Justice, March 26, 2020.

[38] Natalie Ortiz and Vernon Smith, "Building Data-Driven Justice in Prince George's County, MD," National Association of Counties, June 26, 2018, https://www.naco.org/resources/building-data-driven-justice-prince-georges-county-md.

a health care facility, jail, or other corrections program."[39] The county also works to share data among the jail, social services, and other health providers by focusing on identifying those incarcerated who need permanent housing upon reentry. Individuals incarcerated more than 90 days lose their federal benefits because they are no longer considered chronically homeless, so it is critical to identify such individuals early to ensure their housing needs are met prior to release.[40]

Chief Hank Stawinski from the Prince George's County Police Department in Maryland states, "We must acknowledge that we will never have limitless resources with which to effect change . . . we can demonstrate to the community that the investments that we are making with the resources that we do have will yield the greatest return . . . in terms of producing public safety and enhancing the quality of life for all persons."[41]

1.1.5 Congress should fund the Department of Health and Human Services to increase the awareness capacity, quality, uniformity, and coverage of 211 and 988 services nationwide to reduce the burden of call response in situations involving the police.

In 2000, the Federal Communications Commission designated 211 as a shortcut for community information and referral services at the local level, providing an alternative to calling 911 for non-emergency, community service assistance.[42] The local 211 call takers proactively assist those needing behavioral health services, housing, food, or other local services, with specialized services for veterans.[43]

The San Diego 211 center in California serves as a model site with an integrated concierge approach. Trained call takers ask specific questions with the goal of improving the quality of life one individual at a time.[44] The call takers connect the callers with services based on geography and need from a list of 1,500 service providers.[45] In fact, 211 has created a thriving information exchange between community service providers.[46] The call-takers integrate a person-centered approach, tracking the referrals and following up with high-risk clients, while continuing to assist them.[47] Local police both refer individuals to 211 for services and use 211 to locate services for citizens, including open shelter beds.[48]

The 211 service is often run at the county or regional level and "is available to approximately 309 million people, which is 94.6 percent of the total U.S. population."[49] Funding and operation for centers is locally dependent, and 70 percent are partially funded and managed by the United Way.[50] These centers vary in funding strategies. The San Diego 211 center combines local and state funding with financial support from

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[39] Ortiz and Smith, "Building Data-Driven Justice."
[40] Ortiz and Smith, "Building Data-Driven Justice."
[41] Hank Stawinski, Chief of Police, Prince George's County Police Department, MD, email communication with Social Problems Impacting Public Safety Working Group, May 21, 2020.[42] *2-1-1 Report to the Federal Communications Commission* (Washington, DC: Federal Communications Commission, 2000), https://ecfsapi.fcc.gov/file/6518190732.pdf.
[42] *2-1-1 Report to the Federal Communications Commission* (Washington, DC: Federal Communications Commission, 2000), https://ecfsapi.fcc.gov/file/6518190732.pdf.
[43] Greg Cox, Supervisor, San Diego Board of Supervisors, in discussion with Social Problems Impacting Public Safety Working Group, virtual meeting, April 23, 2020.
[44] William York, President and Chief Executive Officer, and Karis Grounds, Vice President of Health and Community Impact, San Diego 211, in discussion with the Social Problems Impacting Public Safety Working Group, virtual meeting, May 8, 2020.
[45] Cox, in discussion with Social Problems, April 23, 2020.[46] "CIE Toolkit," Community Information Exchange San Diego, accessed June 5, 2020, https://ciesandiego.org/toolkit/; and "Community Information Exchange," Community Information Exchange San Diego, accessed June 5, 2020, https://ciesandiego.org/.
[46] "CIE Toolkit," Community Information Exchange San Diego, accessed June 5, 2020, https://ciesandiego.org/toolkit/; and "Community Information Exchange," Community Information Exchange San Diego, accessed June 5, 2020, https://ciesandiego.org/.
[47] National Association of Counties, *Connecting the Unconnected Through 211 and Other Centralized Call Centers* (Washington, DC: National Association of Counties, 2019), https://www.naco.org/sites/default/files/documents/211-Toolkit.pdf.
[48] Cox, in discussion with Social Problems, April 23, 2020.
[49] "Dial 211 for Essential Community Services," Federal Communications Commission, December 31, 2019, https://www.fcc.gov/consumers/guides/dial-211-essential-community-services.
[50] "About 211," 211, accessed June 5, 2020, https://www.211.org/pages/about.

the service agencies who provide services to the callers.[51] Quality and scope vary greatly. Although 98.3 percent of California's population has access to 211 services, 13 counties received 211 services as recently as November 2019 for disaster-related services only, while 7 counties do not have access to 211 services as of 2020.[52]

On December 19, 2019, the Federal Communications Commission designated 988 as the new number for the National Suicide Prevention Lifeline.[53] Having a three-digit number akin to 911 will increase awareness and normalize requests for assistance during a mental health crisis.[54] The more people are aware of this lifeline, the more lives will be saved and the number of suicide-related calls to 911 will decrease.

The Substance Abuse and Mental Health Services Administration (SAMHSA) currently funds the lifeline's administration through a 2018 grant totaling upwards of $18 million to the Mental Health Association of New York City.[55] When an individual calls the hotline, veterans are given the choice to be routed to a line run by the U.S. Department of Veterans Affairs (VA),[56] while all other calls will be routed to a call center close to their location. The veterans' calls are funded through the VA; the local call centers have different funding streams and are mostly staffed by specially trained volunteers.[57]

As 988 use increases, the Department of Justice should coordinate an interagency collaboration with SAMHSA and the VA to ensure appropriate planning, coordination, and resource allocation to increase awareness, match the increase in call volume, and improve the lifeline's effectiveness. John Draper, the director of Lifeline, says, "Lifeline administrators predict that calls could double to 5 million in the first year and keep growing to 12 to 16 million by the fifth. Meeting that need will require more funding and staff for the local call centers, many of which are already struggling to meet the demand for their services."[58]

Increased federal funding can help support increased awareness and support to meet the expected increases in volume of the new 988 number. It would also help to support public advertising campaigns, technical assistance, and the establishment of model 211 sites, which would help set standards for local 211 centers, improve services and awareness, and reduce involvement by law enforcement to address people who need community assistance. It would also help 211 centers decrease the burden on criminal justice professionals, encourage partnerships with law enforcement, and identify effective ways to fill service gaps in rural and tribal communities, such as increasing telehealth and video-enabled assistance.

[CROSS REFERENCE RURAL AND TRIBAL CHAPTER]

1.2 Law Enforcement's Role and Responsibilities to Address Social Problems

It is axiomatic that law enforcement officers should be expected to enforce the law. However, due to a dearth of adequate social and behavioral community health services, law enforcement by default has become responsible for responding to a myriad of social problems while simultaneously conducting their

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[51] William York, President and Chief Executive Officer, San Diego 211, in discussion with the Social Problems Impacting Public Safety Working Group, virtual meeting, May 8, 2020.

[52] "2-1-1 Information Services," California Public Utilities Commission, accessed April, 26, 2020, https://www.cpuc.ca.gov/General.aspx?id=7846.

[53] Federal Communications Commission, "*FCC Proposes Designating 988 as National Suicide Prevention and Mental Health Hotline Number,*" Federal Trade Commission News, December 12, 2019, https://docs.fcc.gov/public/attachments/DOC-361337A1.pdf.

[54] *Federal Communications Commission Implementation of the National Suicide Hotline Improvement Act of 2018, Docket No. 18-336* (December 16, 2019) (statement of Ajit Pai, Chairman, Federal Trade Commission), https://docs.fcc.gov/public/attachments/DOC-361337A2.pdf.

[55] "SAMHSA awards $61.1 million in suicide prevention funding," Substance Abuse and Mental Health Services Administration, September 21, 2018, https://www.samhsa.gov/newsroom/press-announcements/201809211000.

[56] "What to Expect," Veterans Crisis Line, accessed June 5, 2020, https://www.veteranscrisisline.net/about/what-to-expect.

[57] Greg Miller, "Can Three Numbers Stem the Tide of American Suicides?," *The Atlantic*, September 23, 2019, https://www.theatlantic.com/health/archive/2019/09/suicide-prevention-hotline-988/598588/.

[58] Miller, "Can Three Numbers Stem."

traditional duties protecting public safety. .[59] Using law enforcement to address these social issues, however, is not a solution that best serves the individuals they are confronting nor the communities being served. . Additionally, research found that such encounters use a greater level of resources—90 percent—as compared to encounters with individuals who are not mentally ill.[60] Salt Lake City Chief Michael Brown in testimony before the Commission said it best: “We are the most expensive, least effective tool to directly impact the underlying issues of mental health and substance abuse that lead to homelessness. In essence we became the Swiss Army knife of social reform.” The community safety net needs repair, yet law enforcement continues to bear a significant burden in responding to and determining the next steps for those who are mentally ill, substance involved, or homeless.[61]

The high frequency of interaction officers have with citizens with mental health or substance use disorders, or who are homeless with these disorders, puts officers at a higher risk of using force, thereby increasing risk of injury to the citizen and themselves.[62] The Los Angeles Police Department reported that as their homeless population has grown, use of force reports on homeless increased by 26 percent in the third quarter of 2019, as compared to the same time the year prior.[63] The Orange County Sheriff’s Department’s 2019 use of force report illustrates the extent to which drug and alcohol abuse and mental illness are factors. Out of 456 subjects with whom officers used force, 215 of them (47 percent) were under the influence of drugs or alcohol, had mental health issues, or experienced both.[64] At the national level, approximately a quarter of fatal police shootings are related to individuals with mental health disorders.[65] Further, individuals diagnosed with a mental illness have a 16 times greater chance to be killed by police than those without this disorder.[66]

Michael Stuart, U.S. Attorney for West Virginia, notes that these additional responsibilities directly impact officer morale, in particular “the seemingly tremendous fatigue among law enforcement and a general sense that the enforcement of substance abuse crimes is a way of life that will never really resolve itself.”[67]

[CROSS REFERENCE POLICE OFFICER RECRUITMENT AND TRAINING]

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[59] Police Executive Research Forum, *The Workforce Crisis, and What Police Agencies are Doing About It* (Washington, DC: Police Executive Research Forum, 2019), 7, https://www.policeforum.org/assets/WorkforceCrisis.pdf.

[60] Yanick Charette, Anne G. Crocker, and Isabelle Billette, “Police Encounters Involving Citizens With Mental Illness: Use of Resources and Outcomes,” *Psychiatric Services* 65, no. 4 (2014): 515, https://doi.org/10.1176/appi.ps.201300053.

[61] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 31, 2020) Oral testimony of Michael Brown, Chief, Salt Lake City Police Department, UT), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings

[62] Michael T. Compton et al., “Use of Force Preferences and Perceived Effectiveness of Actions Among Crisis Intervention Team (CIT) Police Officers and Non-CIT Officers in an Escalating Psychiatric Crisis Involving a Subject With Schizophrenia,” *Schizophrenia Bulletin* 37, no. 4 (2011), https://doi.org/10.1093/schbul/sbp146; and Joel H. Garner and Christopher D. Maxwell, “Measuring the Amount of Force Used by and Against the Police in Six Jurisdictions,” in *Use of Force by Police: Overview of National and Local Data* (Washington, DC: National Institute of Justice, 1999), 25–44, https://www.ncjrs.gov/pdffiles1/nij/176330-2.pdf.

[63] Leila Miller, “Use-of-Force Incidents against Homeless People Are up, LAPD Reports,” *Los Angeles Times*, January 21, 2020, https://www.latimes.com/science/story/2020-01-21/use-of-force-incidents-against-homeless-people-are-up-lapd-reports.

[64] Don Barnes, Sheriff, Orange County Sheriff’s Office, CA, email communication with Social Problems Impacting Public Safety Working Group, April 20, 2020.

[65] Kimberly Kindy and Kennedy Elliott, “Six Important Takeaways from The Washington Post’s Police Shootings Investigation,” *Washington Post*, December 26, 2015, https://www.washingtonpost.com/graphics/national/police-shootings-year-end/.[66] “Overlooked in the Undercounted,” Treatment Advocacy Center, December 2015, https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted.[67] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Michael Stuart, U.S. Attorney, West Virginia), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.[68] Pai, *Federal Communications Commission Implementation*, December 16, 2019.

[66] “Overlooked in the Undercounted,” Treatment Advocacy Center, December 2015, https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted.[67] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Michael Stuart, U.S. Attorney, West Virginia), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.[68] Pai, *Federal Communications Commission Implementation*, December 16, 2019.

[67] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Michael Stuart, U.S. Attorney, West Virginia), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.[68] Pai, *Federal Communications Commission Implementation*, December 16, 2019.

While the best case scenario for response to someone in immediate mental health and/or substance use crisis would be a behavioral health professional, that is not always possible. Due to the lack of resources, in many cases, law enforcement are the first and only line of response to any crisis, and without other options, officers may have no other choice but to arrest. In other cases, an individual with mental health or substance use issues or someone who is homeless may have in fact committed a crime. These incidences require a level of accountability and enforcement by the law.

Because law enforcement has and will continue to be involved in response to incidents with individuals experiencing mental health disorders, substance use disorders, and/or homelessness, diversion strategies are key to address the treatment needs of individuals and, if appropriate, referral to an alternate path instead of incarceration if a crime has occurred.

The following recommendations seek to disseminate policies, procedures, and partnerships that drawn upon the appropriate roles and strengths of law enforcement and behavioral health professionals.

1.2.1 States should develop policies and baseline training for local call takers for all N11 codes (e.g., 911, 211, 411, or 311). These policies should include procedures to effectively triage calls for individuals experiencing mental illness, substance use disorders, and homelessness during a crisis or a non-crisis situation.

Recognizing that the numbers and services connected to them vary by locality, governments and call centers should tailor the policies and training to best fit the N11 exchange codes (e.g., 911, 211, 411, or 311 exchanges) and needs of their geographic coverage. State policies and training should create a base level of standardization across all codes and call taking services to ensure consistency[68]; professionalism in assisting callers; knowledge and understanding of mental health, substance use, and homeless issues; collaboration and coordination across systems; and, above all else knowledge and understanding to direct or redirect calls to the correct service and level of response as quickly as possible.

PULL QUOTE: “911 call takers can be trained to triage crisis calls and identify whether the person in crisis is a danger to themselves or an immediate threat to someone else. If not, then the call can be transferred to appropriate care in the mental health crisis system through a warm hand-off to a crisis line.”[69] - Ron Bruno, Executive Director, CIT International

Model state policy and training for 911 call takers on these issues should include, but not be limited to, education on the unique needs and optimal responses—including hand-offs to other exchanges. This way, the call taker can triage the call and ensure all needed information is provided to those who are responding to the call while also preparing the caller for the arrival of the responding agency or service. The model state policy should provide guidance on proper data collection, including how to appropriately record and code calls that involve individuals who have behavioral health challenges or are experiencing homelessness.[70]

In Prince George’s County, Maryland, all new 911 and dispatch employees receive eight weeks of academic training that includes the completion of six certifications. This is followed by four months of hands-on, practical training in the performance of their duties.[71] A standardized state or local mandate for minimum requirements would help ensure that all N11 personnel possess the same critical life safety skills.

1.2.2 Law enforcement agencies should have policies and procedures specifying officer response

[68] Pai, *Federal Communications Commission Implementation*, December 16, 2019.
[69] Ron Bruno, Executive Director, Crisis Intervention Team International, public comment to President’s Commission on Law Enforcement and the Administration of Justice, March 30, 2020.
[70] Council of State Governments Justice Center, *Police-Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement Responses for People Who Have Mental Health Needs* (New York: Council of State Governments Justice Center, 2019), https://csgjusticecenter.org/wp-content/uploads/2020/02/Police-Mental-Health-Collaborations-Framework.pdf.
[71] Charlynn Flaherty, Deputy Director, Public Safety Communications, Prince George’s County Office of Homeland Security, MD, email communication to Social Problems Impacting Public Safety Working Group, April 28, 2020.[72] Council of State Governments Justice Center, *Police-Mental Health Collaborations,* 8.

protocols for calls for service that involve individuals with a mental health disorder or substance use disorder or those who are homeless, including the integration of behavioral health professionals and other community services providers.

In 2019, the Council of State Governments Justice Center (CSGJC) issued "Police-Mental Health Collaborations," a framework to help law enforcement implement effective responses to people with mental health needs. The report notes, "Written policies and procedures that are communicated clearly to staff are critical to the overall success of a Police Mental Health Collaboration (PMHC) and empower officers to take actions that can enhance their safety and the safety of others. . . . The PMHC will only realize success, and policies and procedures will only be effective, when these policies and procedures are disseminated, followed, and enforced by leaders in both the law enforcement and behavioral health agencies."[72]

The CSGJC framework applies to developing a policy response to those individuals with mental health needs, but can also be applied to policy development for individuals who are substance-use dependent or homeless.[73] The framework recommends a study and improvement of the agency's current process flow, including strengthening agency procedures and improving connections to community resources (e.g., behavioral health providers).[74] Through clear policies and training, officers should be fully aware of the process to follow and resources available (e.g., crisis intervention officers or social workers) when assisting an individual who has a behavioral health need or is homeless, regardless of whether a crime was committed. Officers should have the knowledge to make an optimal decision when answering a call, knowing when to refer or seek care for an individual, arrest an individual, or ask a supervisor for guidance.

Though law enforcement officers will undoubtedly in their careers respond to calls involving individuals with mental health, substance use, or homeless issues, integrating or even embedding behavioral health professionals in policies and procedures will help to not only reduce burden on law enforcement, but have trained professionals on site or on call to immediately address the crisis.

The President's Executive Order on Safe Policing for Safe Communities reinforces the integral role of behavioral health professionals in addressing social problems, stating,

> The Attorney General shall, in consultation with the Secretary of Health and Human Services as appropriate, identify and develop opportunities to train law enforcement officers with respect to encounters with individuals suffering from impaired mental health, homelessness, and addiction; to increase the capacity of social workers working directly with law enforcement agencies; and to provide guidance regarding the development and implementation of co-responder programs, which involve social workers or other mental health professionals working alongside law enforcement officers so that they arrive and address situations together.[75]

Various collaborative or co-response models that already exist across the country offer alternatives to jail and treat the underlying issues in frequent users of the criminal justice system.[76] [77] [78][79][80][81] The purpose of the partnerships is to connect individuals to services for immediate help and allow officers to be more responsive

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[72] Council of State Governments Justice Center, *Police-Mental Health Collaborations,* 8.

[73] Council of State Governments Justice Center, *Police-Mental Health Collaborations*.

[74] Council of State Governments Justice Center, *Police-Mental Health Collaborations.* [75] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

[75] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

[76] Jessica Waters, Director of Social Work Program, Salt Lake City Police Department, UT, email communication with Social Problems Impacting Public Safety Working Group, April 29, 2020.

[77] Council of State Governments Justice Center, *Police-Mental Health Collaborations.*

[78] Rogers, McNiel, and Binder, "Effectiveness of Police Crisis Intervention."

[79] Waters, email communication with Social Problems, April 29, 2020.

[80] Bureau of Justice Assistance, *Overview of Law Enforcement Mental Health Resources* (Washington, DC: Bureau of Justice Assistance, 2018), 2, https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/JMHCP-Learning-Sites_2018.pdf.

[81] Center for Mental Health Services, *National Guidelines for Behavioral Health.*

to other calls.[82] As Jessica Waters, director of the social work program at the Salt Lake City Police Department (SLCPD), says, "This allows us to reach the most vulnerable individuals, living on the fringe, who are often service and shelter resistant."[83] The SLCPD has a team of social workers who work in a co-responder model, responding to 911 calls that are social issue-related (e.g., mental health, suicide, substance use, homelessness).

A number of response models across law enforcement agencies have been developed dependent on the resources and needs of the jurisdiction.[84] Crisis intervention teams (CITs)have specific training on how to de-escalate those in crisis and divert individuals to treatment;[85] the co-responder team, such as the one used by SLCPD, include responses conducted by an officer in conjunction with a treatment professional. A mobile crisis team has treatment professionals who assist with stabilizing the crisis. Case management teams are behavioral health professionals or service providers who often focus on high-service users or specific places (e.g., tent cities) and work with officers to solve the problem. Case managers take a person-centered approach, assisting with services such as lining up stable housing, obtaining essential documents, and following through on treatment plans.

Support for this policy development and the success of the responses that result requires collaborative partnerships from experts in behavioral health treatment and homeless assistance. Those partnerships, in turn, are dependent on community and government resources.[86] The focus should be on enhancing the treatment and service infrastructure in the community. Most importantly, such collaborative responses will require moving away from specialized programs and toward partnerships in which behavioral health and service providers take on the weight of the response instead of law enforcement continuing to shoulder the burden and blame for systems failures

1.2.3 Law enforcement agencies should develop a training program for contact with individuals with a mental health disorder or substance use disorder or those who are homeless.

[BEGIN TEXT BOX]

"It is the policy of the United States to promote the use of appropriate social services as the primary response to individuals who suffer from impaired mental health, homelessness, and addiction, recognizing that, because law enforcement officers often encounter such individuals suffering from these conditions in the course of their duties, all officers should be properly trained for such encounters."[87] - President Donald J. Trump, Exec. Order No. 13,929

[END TEXT BOX]

Because officers will encounter individuals with mental health, substance use, or homeless issues, law enforcement agencies should have a base training program in the academy, a booster training as an in-service option, and training for officers and specialized units according to the law enforcement agency policy. An important part of the base training should include a basic understanding of the root causes of behavioral

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[82] Stephen Puntis et al., "A Systematic Review of Co-Responder Models of Police Mental Health 'Street' Triage," Abstract, *BMC Psychiatry* 18, no. 256 (2018), https://doi.org/10.1186/s12888-018-1836-2.

[83] Waters, email communication with Social Problems, April 29, 2020.

[84] Council of State Governments Justice Center, *Police-Mental Health Collaborations.*

[85] Rogers, McNiel, and Binder, "Effectiveness of Police Crisis Intervention." [86] International Association of Chiefs of Police, *Improving Police Response to Persons Affected by Mental Illness: Report from the March 2016 IACP Symposium* (Alexandria, VA: International Association of Chiefs of Police, 2018), https://www.theiacp.org/sites/default/files/2018-08/ImprovingPoliceResponsetoPersonswithMentalIllnessSymposiumReport.pdf. [87] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

[86] International Association of Chiefs of Police, *Improving Police Response to Persons Affected by Mental Illness: Report from the March 2016 IACP Symposium* (Alexandria, VA: International Association of Chiefs of Police, 2018), https://www.theiacp.org/sites/default/files/2018-08/ImprovingPoliceResponsetoPersonswithMentalIllnessSymposiumReport.pdf. [87] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

[87] Safe Policing for Safe Communities, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020).

health disorders and homelessness, how to recognize a need or crisis, when and how to include community partners (e.g., behavioral health experts), how to de-escalate a crisis, and how to stay safe in a response.

[CROSS REFERENCE OFFICER SAFETY AND WELLNESS]

For example, The Tucson Police Department (TPD) has an easily replicable stratified training program for responding to incidents involving mental illness with additional models that can be added on substance use disorder and homelessness. TPD also offers a voluntary in-depth 40-hour Crisis Intervention Team (CIT) training. [88] All specialized units in TPD are required to complete CIT training, and they are also required to take part in the advanced booster sessions.

[CROSS REFERENCE POLICE OFFICER RECRUITMENT AND TRAINING; RURAL AND TRIBAL]

1.3 Improving State Court Responses to Social Problems

While the impact of local law enforcement's high rate of arrests of individuals with mental health disorders, substance use disorders, and homelessness falls predominantly on state and local courts, prosecutors and judges do not traditionally or typically address behavioral health, housing, or treatment services for these defendants. As a result, sentencing options for individuals in need are limited, treatment needs are unmet, and those who work in the courts see these individuals repeatedly.[89] This revolving door not only creates a financial burden on the system and community, but also reinforces the reality that, without an increase in community services, crimes associated with these illnesses or circumstance will continue.[90]

Carson Fox, chief executive officer of the National Association of Drug Court Professionals, expressed his frustration with revolving-door justice: "I began my career as a prosecutor in rural South Carolina, where I saw firsthand the devastation, crime, and exorbitant cost associated with addiction. Time and again, the same individuals would appear before the courts for crimes committed in service of their addiction, with the courts, law enforcement, and taxpayers bearing the greatest burden. It was clear that this cycle needed to change, but there was no remedy."[91]

State courts play a very important role in not only holding accountable those who commit crimes, but also in recognizing and using its power and position to address the needs of individuals with behavioral health disorders. Specifically, court diversion programs – drug courts, mental health courts, homeless courts, and other specialty area problem solving courts – have been shown to be effective in reducing time in jail,

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[88] Mental Health First Aid, *Mental Health First Aid or CIT: What Should Law Enforcement Do?* (n.p.: Mental Health First Aid, 2016), https://www.mentalhealthfirstaid.org/cs/wp-content/uploads/2016/01/FINAL-MHFA-CIT-White-Paper-Annoucement.pdf; and Balfour and Winsky, "The Tucson Model's Comprehensive."

[89] *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Carson Fox, Chief Executive Officer, National Association of Drug Court Professionals), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.[90] KiDeuk Kim, Miriam Becker-Cohen, and Maria Serakos, *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System* (Washington, DC: Urban Institute, 2015), https://www.urban.org/research/publication/processing-and-treatment-mentally-ill-persons-criminal-justice-system/view/full_report; Joye C. Anestis and Joyce L. Carbonell, "Stopping the Revolving Door: Effectiveness of Mental Health Court in Reducing Recidivism by Mentally Ill Offenders," *Psychiatric Services* 65, no. 5 (2014), https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201300305; Tara D. Warner and John H. Kramer, "Closing the Revolving Door?: Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders," *Criminal Justice and Behavior* 36, no. 1 (2009), https://doi.org/10.1177/0093854808326743; and Fred L. Cheesman II et al., "Drug Court Effectiveness and Efficiency: Findings for Virginia," *Alcoholism Treatment Quarterly* 34, no. 2 (2016), https://doi.org/10.1080/07347324.2016.1148486.

[90] KiDeuk Kim, Miriam Becker-Cohen, and Maria Serakos, *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System* (Washington, DC: Urban Institute, 2015), https://www.urban.org/research/publication/processing-and-treatment-mentally-ill-persons-criminal-justice-system/view/full_report; Joye C. Anestis and Joyce L. Carbonell, "Stopping the Revolving Door: Effectiveness of Mental Health Court in Reducing Recidivism by Mentally Ill Offenders," *Psychiatric Services* 65, no. 5 (2014), https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201300305; Tara D. Warner and John H. Kramer, "Closing the Revolving Door?: Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders," *Criminal Justice and Behavior* 36, no. 1 (2009), https://doi.org/10.1177/0093854808326743; and Fred L. Cheesman II et al., "Drug Court Effectiveness and Efficiency: Findings for Virginia," *Alcoholism Treatment Quarterly* 34, no. 2 (2016), https://doi.org/10.1080/07347324.2016.1148486.

[91] Carson, *President's Commission on Law,* April 2, 2020*.*

recidivism, and overall costs to the system while not increasing risk to the public.[92] For example, in the San Diego homeless court, cases are often resolved in one hearing; approximately 90 percent of offenses are dismissed.[93] [94] [95] [96] [97] [98]

While there are similarities across each type of diversion court, there are also differences in determining those that qualify for such a diversion program, including the level of risk, seriousness of illness, and type of crime committed. [99, 100, 101 102, 103] For those defendants who would qualify, treatment—or problem-solving—courts provide an alternative to incarceration, with drug courts being the most prominent.[104]

Although diversion programs can help to address these social problems, the need is greater than the supply. A recent survey found that 45 percent of prosecutors' offices do not have prosecutor-led diversion programs.[105] And the National Drug Court Institute estimates that only 10 percent of potential drug court candidates are being served in drug courts.[106]

The following recommendations focus on the opportunities provided by diversion programs and expanding these programs, the importance of improving the application of state treatment court practices to best serve the needs of these special populations, and the need to take into account both the barriers and the challenges in providing services to these individuals.

1.3.1 States should expand their use of treatment courts, provide oversight to ensure adherence to the model, and provide funding for treatment and service specialists.

The large number of people who either have behavioral health disorders or are homeless when entering the correctional system and the high recidivism rates of those exiting the correctional system suggests that treatment and other specialty courts should be expanded to meet the need. [107]

While increasing the number of treatment courts, officials should also ensure that these courts maintain

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[92] Center for Mental Health Services National GAINS *Center, Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (Delmar, NY: Center for Mental Health Services National GAINS Center, 2007), http://www.pacenterofexcellence.pitt.edu/documents/PracticalAdviceOnJailDiversion.pdf.
[93] Commission on Homelessness and Poverty, *Homeless Courts: Taking the Court*.
[94] Michela Lowry and Ashmini Kerodal, *Prosecutor-Led Diversion: A National Survey* (New York, NY: Center for Court Innovation, 2019), 22, https://www.courtinnovation.org/sites/default/files/media/document/2019/prosecutor-led_diversion.pdf.
[95] Lowry and Kerodal, *Prosecutor-Led Diversion*, iv.
[96] Linda K. Frisman et al., "Outcomes of Court-Based Jail Diversion Programs for People with Co-Occurring Disorders," *Journal of Dual Diagnosis* 2, no. 2 (2006), https://doi.org/10.1300/J374v02n02_02; and Henry J. Steadman and Michelle Naples, "Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders," *Behavioral Sciences and the Law* 23, no. 2 (2005), https://doi.org/10.1002/bsl.640.
[97] Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (Washington, DC: The Sentencing Project, 2009), https://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf.
[98] Ojmarrh Mitchell et al., "Drug Courts' Effects on Criminal Offending for Juveniles and Adults," Campbell Collaboration, 2012, https://campbellcollaboration.org/better-evidence/drug-courts-effects-on-criminal-offending.html.
[99] Mitchell et al., "Drug Courts' Effects on Criminal Offending."
[100] Kimberly A. Kaiser and Kirby Rhodes, "A Drug Court by Any Other Name? An Analysis of Problem-Solving Court Programs," *Law and Human Behavior* 43, no. 3 (2019), 278, https://psycnet.apa.org/record/2019-16224-001.
[101] Kaiser and Rhodes, "A Drug Court by Any Other."
[102] Maya Buenaventura, *Treatment Not Custody: Process and Impact Evaluation of the Santa Monica Homeless Community Court* (Washington, DC: RAND Corporation, 2018), https://www.rand.org/content/dam/rand/pubs/rgs_dissertations/RGSD400/RGSD418/RAND_RGSD418.pdf.
[103] Maya Buenaventura, *Treatment Not Custody: Process and Impact Evaluation of the Santa Monica Homeless Community Court* (Washington, DC: RAND Corporation, 2018), https://www.rand.org/content/dam/rand/pubs/rgs_dissertations/RGSD400/RGSD418/RAND_RGSD418.pdf.
[104] Substance Abuse and Mental Health Services Administration, *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), https://store.samhsa.gov/product/Municipal-Courts-An-Effective-Tool-for-Diverting-People-with-Mental-and-Substance-Use-Disorders-from-the-Criminal-Justice-System/SMA15-4929.
[105] Lowry and Kerodal, *Prosecutor-Led Diversion*, iv.
[106] Celinda Franco, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress* (Washington, DC: Congressional Research Service, 2010), https://fas.org/sgp/crs/misc/R41448.pdf.
[107] Avi Bhati, John Roman, and Aaron Chalfin, *To Treat or Not to Treat* (Washington, DC: Urban Institute, 2008), xv, https://www.urban.org/research/publication/treat-or-not-treat.

adherence to the evidence-based practices and established frameworks of the model, proven to reduce recidivism and increase positive treatment outcomes while decreasing the burden on law enforcement and the criminal justice system.[108] Courts should also incorporate quality assurance and improving processes to stay up to date and examine their own practices for opportunities for improvement.[109] [110]

All jurisdictions, but especially local jurisdictions should ensure funding for quality treatment and service specialists who serve the needs of the treatment court's population. These specialists should be an equal member and voice within the court team; the court should ensure that they can provide or connect defendants to an array of treatment based on their specialized needs.

[CROSS REFERENCE INTERSECTION OF CRIMINAL JUSTICE PERSONNEL CHAPTER]

1.3.2 States should adopt programs to reduce the bottleneck of the process for competency restoration to stand trial.

An individual who has an active mental or intellectual disability and who is arrested for committing a crime may be deemed not competent to stand trial. "Competency" is a legal term that focuses on the need of the criminal justice system; it is not necessarily focused on the need to provide treatment to assist the individual.

This process can be lengthy. An analysis of 68 studies found that competency restoration, which took 90–120 days, was eventually successful for 81 percent of the individuals.[111] The length of stay varies by state, with 25 of the 30 states holding individuals for competency restoration for 60 or more days, 13 holding individuals for more than 120 days, and 2 holding individuals more than 360 days.[112]

Hallie Fader-Towe and Ethan Kelley of the Council of State Governments Justice Center note the lack of an effective national conversation around how to address and relieve the competency restoration process across state and local jurisdictions.[113] This has many parts, such as treatment considerations, availability of treatment space, and local standards for commitment. These and other elements make the barriers to competency restoration difficult to study, understand, and address.

Individuals court-ordered to competency restoration require treatment to regain competency, but there is a critical shortage of state treatment beds, especially for those criminally charged. A study by Danzer et al. states,

> It appears that hospital beds used for competency restoration might be best reserved for defendants facing serious and violent charges, with psychotic disorders, cognitive impairment, medication non-adherence, and lesser concern about malingering. . . . If defendants are suspected of malingering, refuse to participate in hospital-based services, or show that volitional, antisocial, or aggressive behavior is clearly the major impediment to restoration, jail may be more appropriate and, in some cases, incentivizing.[114]

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[108] Mitchell et al., "Drug Courts' Effects on Criminal Offending."

[109] National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components* (Washington, DC: Bureau of Justice Assistance, 2004), https://www.ncjrs.gov/pdffiles1/bja/205621.pdf.

[110] "Center for Research Partnerships and Program Evaluation (CRPPE): Overview," Bureau of Justice Assistance, December 9, 2019, https://bja.ojp.gov/program/crppe/overview.

[111] Gianni Pirelli, William H. Gottdiener, and Patricia A. Zapf, "A Meta-Analytic Review of Competency to Stand Trial Research," *Psychology, Public Policy, and Law* 17, no. 1 (2011), https://doi.org/10.1037/a0021713.

[112] W. Lawrence Fitch, *Forensic Mental Health Services in the United States: 2014* (Alexandria, VA: National Association of State Mental Health Program Directors, 2014), https://nasmhpd.org/sites/default/files/Assessment%203%20-%20Updated%20Forensic%20Mental%20Health%20Services.pdf.

[113] Hallie Fader-Towe, Program Director, and Ethan Kelly, Senior Policy Analyst, Council of State Governments Justice Center, "Restoration to Competency and Data-Driven Practices" (PowerPoint presentation, Social Problems Impacting Public Safety Working Group, virtual meeting, May 15, 2020).

[114] Graham S. Danzer et al., "Competency Restoration for Adult Defendants in Different Treatment Environments," *Journal of the American Academy of Psychiatry and the Law Online*, (2019), 13, http://jaapl.org/content/early/2019/02/08/JAAPL.003819-19.

The burden to restore individuals to competency and the accompanying system backlog are costly to the community, frustrating for victims and criminal justice practitioners, and devastating to the individual and their family. Individuals who are part of this process often spend more time at each stage of the criminal justice system, which ultimately decreases their chances for a positive outcome.[115] Because of this frustration, the settlement in Trueblood et al. vs. Washington State Department of Social and Human Services, Case No. 14-cv-01178-MJP (2018), resulted in a phased implementation plan, which included an increase in treatment services, training for court and correctional staff, and a more timely restoration process.[116]

This bottleneck can be reduced by increasing the community behavioral health treatment capacity so people either do not enter the system or, when possible, are diverted to the community. When diversion is not possible, courts and prosecutors may consider different factors and alternatives to ordering competency restoration, including reviewing the severity of the charges and the severity of the disability.

1.3.3 The Department of Justice should examine how local laws and policies that decriminalize or reduce sanctions for drug use or activities related to homelessness impact law enforcement and public safety.

While law enforcement certainly plays a role in addressing the needs of individuals with substance use disorders and those who experience homelessness, they are also responsible for enforcing the law and maintaining public safety. Certain localities across this country have decriminalized or reduced sanctions for drug use, such as in the case of marijuana, or “quality of life” crimes – actions that are often a result of homelessness – such as public urination.

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Deputy Sheriff Tyrone S. Enriquez from Orange County says, “While I agree that homelessness should not be criminalized or punished simply for their homeless status, Martin v. City of Boise has inherently made enforcing laws such as trespassing more difficult. While mandating shelters for the homeless in a 1:1 ratio is a noble idea, the applicability of the mandate must be questioned considering Los Angeles County alone has around 50,000 homeless people.”[117] - Deputy Sheriff Tyrone S. Enriquez from Orange County

[END TEXT BOX]

U.S. Attorney for the District of Vermont Christina E. Nolan explains, “When something is decriminalized, it takes a tool away from law enforcement, signals that the behavior is OK and will not have consequences, and logically will lead to more of the undesirable behavior. . . . Decriminalization of drugs will lead to more use, more related crime, and more drain on law enforcement resources and morale.”[118]

Decriminalization and reduction in sanctions merely raise the bar for law enforcement arrests, but they do not account for the reality that law enforcement officers still must address the complaints about these individuals from community members, respond to the noncriminal results of untreated substance use

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[115] Lisa Callahan and Debra A. Pinals, “Challenges to Reforming the Competence to Stand Trial and Competence Restoration System,” *Psychiatric Services* 71, no. 2 (2020), https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201900483.

[116] “A.B. by and through Trueblood v. DSHS,” *Disability Rights Washington* (blog), accessed June 7, 2020, https://www.disabilityrightswa.org/cases/trueblood/; and *Trueblood v. Washington State Department of Social and Human Services*, Case No. 14-cv-01178-MJP (2018), https://www.dshs.wa.gov/sites/default/files/BHSIA/FMHS/Trueblood/2018Trueblood/599_1_AmendedAgreement.pdf.[117] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 24, 2020) (written statement of Tyrone S. Enriquez, Deputy, Orange County Sheriff’s Department, CA), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

[117] *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 24, 2020) (written statement of Tyrone S. Enriquez, Deputy, Orange County Sheriff’s Department, CA), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

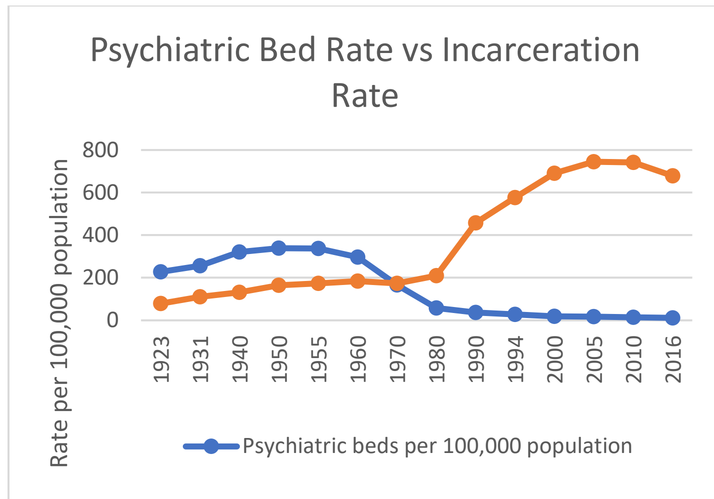
[118] Christina E. Nolan, U.S. Attorney, Vermont, email communication with Social Problems Impacting Public Safety Working Group, May 22, 2020.

problems (e.g., overdoses), or interact with large homeless populations. This often results in an increase in the number of people in need who intersect with law enforcement, while the mechanisms to sanction these behaviors and shepherd people into court-mandated treatment programs are removed. This may have a greater cost to the community, including escalation and long-term drug use.

Sheriff Don Barnes of Orange County states, "In 2018, my department led an effort to address a large homeless encampment on the Santa Ana Riverbed. The encampment approached 1,000 people, many of whom were mentally ill and drug addicted . . . In remediating the riverbed we collected 13,950 used hypodermic syringes. This staggering number is a direct result of the decriminalization of drugs. In California, possession of drugs results in nothing more than a misdemeanor citation." Sheriff Barnes emphasized that he was not advocating incarcerating drug-addicted individuals. Instead, he notes, "Crimes committed without consequence invite more crime, negatively impacting the community and systems that lack individual accountability exacerbate the problem by encouraging bad behavior."[119]

The Department of Justice as well as state and local governments should evaluate the impact and side effects that the laws and policies of local and jurisdictions have on the safety of their community and effectiveness of their criminal justice system to better inform legislation, community services planning, and directing resources.

1.4 Prioritizing Treatment in Corrections



Multiple sources of data show that the prevalence of behavioral health disorders, including drug dependence, in the jail and prison populations is higher than in the general population. According to the Department of Justice's Bureau of Justice Statistics, from 2007-2009 more than half (58 percent) of state prisoners and two-thirds (63 percent) of sentenced jail inmates met the criteria for drug dependence or abuse. In comparison, approximately 5 percent of the total general population age 18 or older met the criteria for drug dependence or abuse.[120] Table 1.1 provides estimates from a 2016 Department of Health and Human Services, SAMHSA publication, indicating that the prevalence rates of mental health, substance use, and co-occurring disorders is greater in correctional settings than in the community.[121]

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[119] Barnes, *President's Commission on Law,* March 25, 2020. [120] U.S Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Special Report: Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009." June 2017, https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf

[120] U.S Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Special Report: Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009." June 2017, https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf

[121] Estimates compiled by Substance Abuse and Mental Health Services Administration after a review of literature. See original source for more information. Substance Abuse and Mental Health Services Administration, *Guidelines for Successful Transition of People with Mental or*

Table 1.1: Estimated Prevalence of Serious Mental Illness, Substance Use Disorder, and Co-occurring Disorder in the Community, Jails, and Prisons

	Community	Jail	Prison
Serious mental illness	5%	17%	16%
Substance use disorder	9%	68%	53%
Co-occurring disorder	14–25%	33–60%	33–60%

Source: Substance Abuse and Mental Health Services Administration, *Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), 3, https://store.samhsa.gov/product/Guidelines-for-Successful-Transition-of-People-with-Mental-or-Substance-Use-Disorders-from-Jail-and-Prison-Implementation-Guide/SMA16-4998.

Although studies estimate that more than 50 percent of inmates have a substance use disorder, only about 22–28 percent are treated for it.[122] In addition to an increased prevalence of behavioral health disorders in correctional facilities, these individuals also stay in jail longer, have more trouble coping with correctional settings, and have more behavioral problems.[123]

Just as individuals are treated for physical health needs while in prison or jail, we should also prioritize the provision of substance use disorder and mental health treatment in correctional facilities given the prevalence of these issues in this population. To increase positive outcomes, reduce recidivism, and decrease the burden on the criminal justice system, communities should build treatment and service capacity and provide needed treatment and services for the incarcerated population. [124] Provision of services should begin in the corrections facility and follow individuals into the community to ensure continuity of treatment. An integrated case management system and network of formalized partnerships—sharing individual-level data and integrated program plans across law enforcement, corrections, behavioral health, service providers, and program partners—is key to assuring a seamless system of care spanning the correctional system and the community.

[CROSS REFERENCE REENTRY]

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According to data presented by Sheriff Peter Koutoujian of Middlesex County, Massachusetts, during the first three months of the Middlesex jail's expanded MAT program, 58 percent of individuals at the jail tested positive for illicit drug use at the time of intake.[125] Noting that community-based overdose deaths increased over six consecutive years, the sheriff's office developed an MAT program known as Medication-Assisted

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Substance Use Disorders from Jail and Prison: Implementation Guide (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), 3, https://store.samhsa.gov/product/Guidelines-for-Successful-Transition-of-People-with-Mental-or-Substance-Use-Disorders-from-Jail-and-Prison-Implementation-Guide/SMA16-4998.

[122] Jennifer Bronson et al., *Drug Use, Dependence, and Abuse*, 1.

[123] Kimberly A. Houser, Steven Belenko, and Pauline K. Brennan, "The Effects of Mental Health and Substance Abuse Disorders on Institutional Misconduct Among Female Inmates," *Justice Quarterly* 29, no. 6 (2012), https://doi.org/10.1080/07418825.2011.641026; and Council of State Governments Justice Center, *Improving Outcomes for People With Mental Illnesses Involved With New York City's Criminal Court And Correction Systems*, (New York: Council of State Governments Justice Center, 2012), https://csgjusticecenter.org/publications/improving-outcomes-for-people-with-mental-illnesses-involved-with-new-york-citys-criminal-court-and-correction-systems/.

[124] Substance Abuse and Mental Health Services Administration, *Principles of Community-Based Behavioral Health Services for Justice-Involved Individuals: A Research-Based Guide* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2019), https://store.samhsa.gov/product/Principles-of-Community-based-Behavioral-Health-Services-for-Justice-involved-Individuals-A-Research-based-Guide/SMA19-5097; and Grant Duwe, *The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes* (Washington, DC: National Institute of Justice, 2017), https://www.ncjrs.gov/pdffiles1/nij/250476.pdf.

[125] Middlesex County Sheriff's Office, *Opioid Treatment Program: 120-Day Fact Sheet (September 1–December 31, 2019)* (Medford, MA: Middlesex County Sheriff's Office, 2020).

Treatment and Directed Opioid Recovery (MATADOR), which combines pharmaceutical and behavioral interventions. The program also uses navigators who work with individuals upon reentry and coordinate with community health care providers. The program has seen a one-year post-release recidivism rate of 10.87 percent for inmates treated with naltrexone, while the recidivism rate for a control group was more than twice that (24.75 percent). With respect to health outcomes, of the more than 500 inmates who received one or more naltrexone treatments since the program's inception, 95.44 percent have not succumbed to fatal overdose. MATADOR, which began initially with naltrexone treatments, expanded in September of 2019 to include methadone and buprenorphine.[126]

[END TEXT BOX]

Leaders in the field, such as Orange County, California, or Maricopa County, Arizona, have begun to integrate treatment into facilities and provide the necessary assistance both to ensure that this treatment continues upon an individual's reentry and that housing will be made available. These facilities implement screening and assessment tools to identify individuals with behavioral health disorders and other needs.[127] This information provides direct paths to treatment plans, including the gold standard treatment for opioid use disorders, medication-assisted treatment (MAT)MAT, talk therapies that incorporate cognitive behavioral therapy and motivational interviewing, and peer-group support models (e.g., alcoholics anonymous and narcotics anonymous).[128] In addition to screening for inmates, it is also critical for correctional leaders to integrate training for their staff to understand behavioral health disorders and the importance of providing treatment so they can better assist those in their custody.

[BEGIN TEXT BOX]

PULL QUOTE: "By default, the Orange County Jail has become the largest mental health hospital in our county. As I have made clear many times, if our jail system is going to function as a mental health hospital, then it is going to be a good one." - Sheriff Don Barnes, Orange County, California[129]

The challenges faced by Orange County highlight what correctional facilities face nationwide and provide an insight into potential solutions. Of the 5,000 inmates housed in the Orange County jail, up to 2,000 require mental health treatment. To meet this challenge, the jail implemented a new jail classification system that enhances out-of-cell time with increased access to necessary and critical programming; eliminated late-night releases; constructed new mental health housing modules; increased and enhanced staffing ratios for those units, which includes specific staff being trained in CIT; expanded the use of MAT programs to treat 500–600 people per day, implementing medically supervised substance use disorder step-down units to treat the 100–120 people per day who are detoxing off alcohol or drugs; and created a housing unit for military veterans, connecting them to services and care.[130]

[END TEXT BOX]

Dr. Shannon Robinson, an expert in addiction issues from Health Management Associates, explains, "Trauma, mental illness, substance use disorders and homelessness have bidirectional influences upon each other. To

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[126] Shawn MacMaster, Director, Strategic Development and Project Planning, Middlesex County Sheriff's Office, MA, email communication with Robbye Braxton, Federal Program Manager, Reentry Programs and Initiatives Working Group, May 28, 2020.

[127] Joe Balicki, Commander, Orange County Sheriff's Department, CA, and Erin Winger, Deputy Agency Director, Correctional Health Services, Orange County Health Care Agency, "Orange County Jail-Based Programming to Address Addiction and Mental Illness" (PowerPoint presentation, Social Problems Impacting Public Safety Working Group, virtual meeting, May 19, 2020).

[128] Raymond Chip Tafrate, Damon Mitchell, and David J. Simourd, *CBT with Justice-Involved Clients: Interventions for Antisocial and Self-Destructive Behaviors* (New York: Guilford Publications, 2018); *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 26, 2020) (statement of Keith Humphreys, Section Director for Mental Health Policy, Department of Psychiatry and Behavioral Services, Stanford University), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings; and Balicki and Winger, "Orange County Jail-Based Programming," May 19, 2020.

[129] County of Orange Community Corrections, *Integrated Services: 2025 Vision*, 6.

[130] Don Barnes, Sheriff, Orange County Sheriff's Office, CA, email communication with Social Problems Impacting Public Safety Working Group, April 28, 2020; and Balicki and Winger, "Orange County Jail-Based Programming," May 19, 2020.

stop the multi-generational effects of these issues and ever-increasing resource utilization, we can treat [mental health and substance use disorders] with evidence-based treatments including motivational interviewing, cognitive behavioral therapy, contingency management, and MAT."[131]

While cost can be a major barrier to prioritizing and implementing treatment capacity within correctional facilities, other challenges also exist, including the lack of standards of care in correctional settings and the shortage of treatment specialists who are willing to work in such settings.[132] In addition, programs that fit within the short time frame of jail sentences may be difficult to find.[133] As individuals leave the institution and reenter the community, they may have trouble connecting with needed services.[134]

Although the provision of mental health and substance use disorder treatment and capacity has increased in jails and prisons, far too many institutionalized settings do not have or provide access to evidence-based treatment programs. The most effective method of ensuring positive outcomes and reducing recidivism requires identification of treatment need early, provision of evidence-based treatment while incarcerated, and continuity of care upon release.

Furthermore, while the Health Insurance Portability and Accountability Act (HIPAA) allows for protected health information to be shared between correctional institutions and health providers for the purposes of treatment, records created as part of substance use treatment typically require consent authorization.[135] As a result, inflexible privacy laws can deter patient-centered care if relevant information cannot be shared between providers. Other state and federal medical record confidentiality laws may further constrain this type of sharing. HIPAA regulations preempt state laws that are less stringent than HIPAA, but HIPAA is then preempted by state laws that are more stringent. In the context of information disclosure, these state laws are more protective of privacy (45 C.F.R. § 160.203(b)).

It is difficult for treatment and service providers to make a comprehensive recommendation without sufficient information regarding a defendant's substance use disorder history. This information helps providers coordinate with correctional staff to address an individuals' specific needs; inform the probability that the individual is willing or able to comply with court orders; and evaluate an individual's likelihood for success while on supervision, in a correctional setting, or in the community.

Regarding individuals in correctional facilities, Congress should update HIPAA laws to provide clearer statutes that consider basic information sharing of records relating to treatment and health information among first responders, criminal justice practitioners, and service partners to support successful outcomes.

[CROSS REFERENCE REENTRY]

1.4.1 Jails should screen every individual booked into the facility for substance use disorder and mental health disorder. Jails should follow up with a full assessment for anyone who screens positive.

Jails that systematically screen every inmate can help identify and properly diagnose mental health or

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[131] *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 25, 2020) (statement of Shannon Robinson, Principal, Health Management Associates), https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings.

[132] Susan Pollitt and Luke Woollard, "Barriers to Access and Inadequate Levels of Care in North Carolina Jails," *North Carolina Medical Journal* 80, no. 6 (2019), https://doi.org/10.18043/ncm.80.6.345.

[133] Center for Substance Abuse Treatment, "8 Treatment Issues Specific to Jails," in *Substance Abuse Treatment for Adults in the Criminal Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005), https://www.ncbi.nlm.nih.gov/books/NBK64145/.

[134] Ingrid A Binswanger et al., "'From the Prison Door Right to the Sidewalk, Everything Went Downhill,' A Qualitative Study of the Health Experiences of Recently Released Inmates," *International Journal of Law and Psychiatry* 34, no. 4 (2011), https://pubmed.ncbi.nlm.nih.gov/21802731/.

[135] Christina Abernathy, Corrections and Reentry: Protected Health Information Privacy Framework for Information Sharing (Tallahassee: Institute for Intergovernmental Research, 2014), http://www.appa-net.org/eweb/docs/APPA/pubs/CRPHIPFIS.pdf; and U.S. Department of Health and Human Services, "Confidentiality of Substance Use Disorder Patient Records," Federal Register 82, no. 11 (2017), https://www.govinfo.gov/content/pkg/FR-2017-01-18/pdf/2017-00719.pdf.

substance use disorders.[136] Screening and assessment tools should be valid, reliable, and developed from evidence-based research.[137] This information can inform programming and improve efforts to reduce recidivism.

[CROSS REFERENCE REENTRY]

Regarding Maricopa County, Sheriff Paul Penzone says, "Every detainee goes through a comprehensive evaluation upon entering our custody. On average, between 3,000–3,500 detainees will have a comprehensive mental health evaluation. Approximately 28 percent of those evaluated will be classified as having some level of mental illness. Additionally, 8–10 percent will be designated as seriously mentally ill (SMI). Of the SMI population, 28 percent will report some level of homelessness or home instability and an estimated 34 percent self-report some degree of substance abuse as an additional factor complicating the behaviors and threat to safety."[138]For example, the Sheriff's Department in Orange County uses screening data to design comprehensive programing that will inform Orange County as it helps inmates achieve mental health stability, maintain sobriety, and avoid returning to custody upon release.

1.4.2 Correctional facilities should provide evidence-based treatment for inmates with behavioral health disorders while they also address the inmates' criminogenic needs.

The use of evidence-based treatment and services in correctional facilities has been shown to have a positive impact on curtailing substance use disorders and increasing stability for those who have mental health disorders.[139] Treatment and services should also incorporate and address an assessment of an individual's level of risk for recidivism, criminogenic needs, and other individual characteristics, such as gender.[140] [141]

[CROSS REFERENCE REENTRY]

As correctional facilities work to adopt these programs and implement best practices, costs and resources can deter progress. Regardless, they must be fiscally prioritized as their success speaks for itself. Evidence-based services, like MAT, are effective and necessary tools to achieve sobriety and mental health stability and reduce recidivism. Resources should also be prioritized to assure seamless care into the community. For instance, people leaving institutions should have a long-term care plan and, when appropriate, be prescribed a 90-day supply of medications by institution health officials to ensure there is no gap in medication delivery.

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[136] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health*; Keith Scott and Pat Tucker, "Housing Instability Risk: How to Recognize It and What to Do When You See It," (webinar hosted by Substance Abuse and Mental Health Services Administration, October 26, 2017); Substance Abuse and Mental Health Services Administration*, Principles of Community-Based Behavioral*; and Interdepartmental Serious Mental Illness Coordinating Committee, *The Way Forward.*

[137] Substance Abuse and Mental Health Services Administration, *Screening and Assessment of Co-Occurring Disorders in the Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2019), https://store.samhsa.gov/product/Screening-and-Assessment-of-Co-Occurring-Disorders-in-the-Justice-System/PEP19-SCREEN-CODJS.

[138] Penzone, *President's Commission on Law,* March 25, 2020.[139] Steven Belenko, Matthew Hiller, and Leah Hamilton, "Treating Substance Use Disorders in the Criminal Justice System," *Current Psychiatry Reports* 15, no. 11 (2013), https://doi.org/10.1007/s11920-013-0414-z; and Munthe-Kass, Berg, and Blaasvaer, *Effectiveness of Interventions to Reduce, 28, 87.*

[139] Steven Belenko, Matthew Hiller, and Leah Hamilton, "Treating Substance Use Disorders in the Criminal Justice System," *Current Psychiatry Reports* 15, no. 11 (2013), https://doi.org/10.1007/s11920-013-0414-z; and Munthe-Kass, Berg, and Blaasvaer, *Effectiveness of Interventions to Reduce, 28, 87.*

[140] Grant Duwe and KiDeuk Kim, "The Neglected 'R' in the Risk-Needs-Responsivity Model: A New Approach for Assessing Responsivity to Correctional Interventions," *Justice Evaluation Journal* 1, no. 2 (2018), https://doi.org/10.1080/24751979.2018.1502622.

[141] Ryan M. Labrecque, "Specialized or Segregated Housing Units: Implementing the Principles of Risk, Needs, and Responsivity," in *Routledge Handbook on Offenders with Special Needs*, ed. Kimberly D. Dodson (New York: Routledge, 2018).