



# Judges' Guide to Mental Health Diversion

A Reference for  
Justice System Practitioners

Judges' Criminal Justice/Mental Health  
Leadership Initiative

CMHS National GAINS Center

The Council of State Governments  
Justice Center

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Leadership Initiative**

The CMHS National GAINS Center and the Justice Center coordinate the Judges' Criminal Justice/Mental Health Leadership Initiative (JLI) to help judges expand their role in community and State responses to the involvement of people with serious mental illness in the justice system. The JLI facilitates information sharing and networking opportunities among judges.



## CMHS National GAINS Center

The CMHS National GAINS Center, a part of the CMHS Transformation Center, serves as a resource and technical assistance center for policy, planning, and coordination among the mental health, substance abuse, and criminal justice systems. The center's initiatives focus on the transformation of local and State systems, jail diversion policy, and the documentation and promotion of evidence-based and promising practices in program development. The GAINS Center is funded by the Center for Mental Health Services and is operated by Policy Research Associates, Inc., of Delmar, NY.

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The CSG Justice Center is a national nonprofit organization that provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities. Its Criminal Justice/Mental Health Consensus Project is an unprecedented effort to help local, State, and Federal policymakers and criminal justice and mental health professionals improve the response to people with mental illness who come into contact with the criminal justice system. The landmark Consensus Project Report was released in June 2002. Since then, Justice Center staff have supported the implementation of practical, flexible, collaborative strategies through on-site technical assistance; dissemination of information about programs, research, and developments in the field; continued development of policy recommendations; and educational presentations.

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## **I. Why You?**

### The Problem

Approximately 15 percent of men and 31 percent of women in jail have a serious mental illness (Steadman et al., 2009). It is estimated that each year more than 1.1 million people diagnosed with mental illnesses are arrested in the United States (Steadman et al., 2009; Federal Bureau of Investigation, 2009). Roughly three-quarters of these individuals are expected to also experience co-occurring substance use disorders, which increase their likelihood of becoming involved in the justice system (Teplin, 1994; Abram et al., 2003). The incarceration of people with serious mental illness, often for minor crimes, is expensive and results in negative outcomes for consumers, their families, and their communities. In response, many communities have implemented local strategies, including transition planning and jail diversion programs.

## Why You?

### **You just might witness a miracle**

Judge Matthew D’Emic, presiding judge of the Brooklyn Mental Health Court, writes on MI-Watch.org, “I witnessed a miracle.” He proceeds to describe the case of Michael who had a 20-year history of hospitalizations and treatment failures until referral to Judge D’Emic’s courtroom. Fourteen months after enrollment in the court, Michael graduated from the program, dressed in a suit and tie and in the company of his sister (D’Emic, 2009). If you’re reading this guide, you’ve probably met someone like Michael and are in search of a better way for the court and other entities in the criminal justice system to respond.

### **You just might change a State**

In response to judicial outrage over the State’s lack of capacity to provide secure treatment beds for court-committed individuals, Chief Justice R. Fred Lewis of the Florida Supreme Court formed a task force to examine the mental health service delivery system in Florida as it relates to the

criminalization of people with mental illnesses (Supreme Court of Florida, 2007a). A task force report led to a \$6 million dollar legislative appropriation to broadly address inefficiencies and gaps in mental health care (Supreme Court of Florida, 2007b).

### **You just might save a life**

In Georgia, a subcommittee of a Chief Justice-led task force surveyed jail mental health services and recommended protocols for statewide mental health and suicide screening in jails.

## Judges as Catalysts

There is a crisis. People with mental illnesses are overrepresented at every step of the criminal justice system. The majority have a co-occurring substance use disorder that complicates their recovery. In many communities, jails hold more people with mental illness than do hospitals.

Judges are uniquely suited to address complex social issues confronting today's courts due to their ability to

- Convene broad-based stakeholder groups

- Influence oversight of social service agencies
- Hold defendants accountable for participating in programs that address their mental health and substance use treatment needs

Judges have access to stakeholders across political lines, at the highest level of local and State government, and across the justice and behavioral health systems. Judges are therefore uniquely positioned to bring together influential stakeholders to address the complex needs of people with co-occurring disorders.

## How to Use This Guide

This guide is written for judges interested in developing, implementing, or expanding court and jail diversion programs in their communities. Each section is designed to provide a concise overview and to suggest where to go, within or beyond the guide, to find more information on a subject. This guide may also be of value to advocates and others interested in developing better outcomes for people with mental illnesses at risk of justice involvement.

## II. The What and Why of Jail Diversion

### Jail Diversion as a Criminal Justice Response

#### **Definition**

Jail diversion is a community-based, collaborative criminal justice–mental health response for justice-involved people with mental illnesses where jail time is reduced or avoided, and the individual is linked to comprehensive and appropriate services.

#### **Jail diversion is not a free pass**

Jail diversion strategies combine community-based treatment and supervision to achieve public safety goals—reduced time spent in jail, reduced arrests, fewer victims, and reduced violence—along with public health objectives. Although it varies by program, conditions of enrollment often include probation supervision, day reporting to pre-trial services, or periodic reporting to court. Supervision is in addition to case management by a mental health services provider. Diversion can be pre-plea or post-plea.

## Forms of Jail Diversion

Jail diversion programs can be divided into two basic categories: those that divert people before they are booked into jail and programs that divert people after booking.

### **Pre-booking**

The most prevalent pre-booking diversion programs rely on law enforcement officers trained to interact objectively with people with mental illness in crisis. In many circumstances, such as the commission of minor crimes in which violence is not a factor, specially trained officers who encounter a person exhibiting symptoms of a mental illness are allowed to use their discretion to determine the necessity of arrest. The most recognized pre-booking program is the Crisis Intervention Team (CIT), as developed in Memphis, TN. CIT is a response in which a unit or selected officers are trained in de-escalation techniques and in effectively linking individuals to services. Another specialized policing response (SPR) relies on mental health specialists—who are often civilian employees of the law enforcement

agency—to provide on-site or telephone consultation to officers. A third approach is a specialized community mental health response where a mental health mobile crisis team is dispatched upon request from law enforcement.

### **Post-booking**

The majority of jail diversion programs fall into the post-booking category and are either jail based or court based, depending on where the bulk of the screening and identification occurs. Some programs assign participants to a regular or specialty mental health probation caseload, whereas others rely on pre-trial services case managers or day reporting. The major activities include screening for mental illness, evaluating referred individuals against eligibility criteria, accepting individuals into the program, coordinating mental health and other service systems to develop an integrated supervision/service plan, and linking program participants to those services. Community-based supervision generally accompanies linkages to treatment



services, although the form and duration of monitoring varies by program.

Court-based programs can be established to identify individuals at any point within the criminal case process, from initial appearance to pre-sentencing. Moreover, court-based programs may rely on traditional criminal courts to process diversion cases or employ a specialized docket, which can address all such cases.

### **Specialty courts**

The Council of State Governments Justice Center (2008) defines a mental health court as:

A specialized court docket for certain defendants with mental illnesses that substitutes a problem-solving model for traditional criminal court processing. Participants are identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental

health professionals. Incentives reward adherence to the treatment plan or other court conditions, non-adherence may be sanctioned, and success or graduation is defined according to predetermined criteria.

## How Jail Diversion Works

### **Jail Diversion Logic Model**

For a post-booking program, most of the core activities precede the diversion of an individual. The identification of a target population through referrals and screening is followed by assessment to determine eligibility criteria (clinical, jurisdictional, and criminal justice). In the Jail Diversion Logic Model (see Figure 1), these core activities that lead to program enrollment represent the first stage.

Eligible individuals who opt to participate in the program are then presented to the court, along with counsel, where the court accepts or rejects the treatment and supervision plan developed by the program staff and offered as an alternative

to regular criminal case processing. Once an individual is enrolled in the program, he or she is linked to community-based services—the second stage—in lieu of incarceration. Mental health case managers work with the individuals and service providers to ensure that treatment needs are met. Through access to and use of comprehensive and appropriate community-based services, the model proposes two sets of outcomes in the third stage—improved mental health and criminal justice outcomes.

## Jail Diversion Within the Sequential Intercept Model

The Sequential Intercept Model is a conceptual framework for communities to organize targeted strategies for justice-involved individuals with serious mental illness. It reflects the ordered criminal justice system processing and focuses on where in the sequence programs can be set up to find and divert a person to appropriate community-based services.

Within the criminal justice system there are numerous intercept points—opportunities for linkage to services and for prevention of further involvement

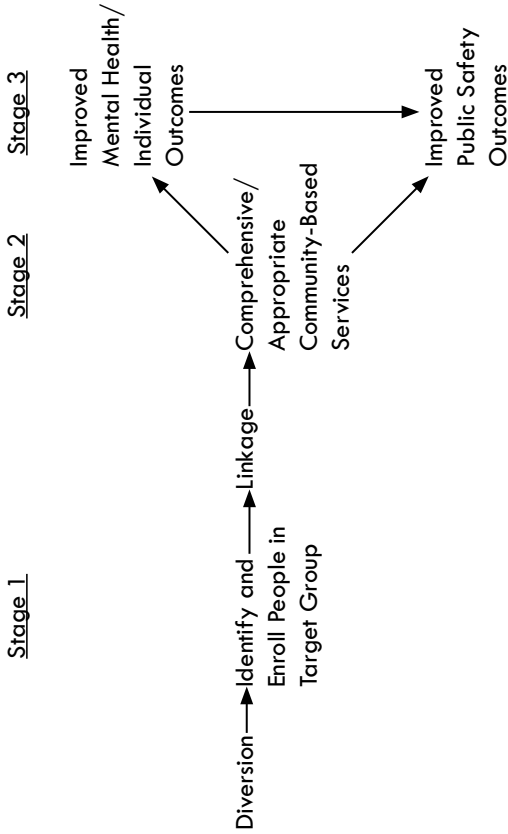


Figure 1. Jail Diversion Logic Model

with the criminal justice system. The model identifies five intercept points:

1. Law enforcement encounters
2. Initial detention/initial hearings
3. Jails/courts
4. Reentry from jail or prison
5. Community corrections supervision

Jail diversion programs operate at the first three intercept points. Pre-booking programs operate at Intercept 1, while post-booking programs operate at Intercepts 2 and 3 (see Figure 2). More on the Sequential Intercept Model is discussed in Section IV.

## Jail Diversion as an Effective Response

The published evidence on jail diversion strategies reports modest to large consistent results. They have been shown to

1. Increase individuals' time spent in the community compared with the period prior to diversion or compared with non-diverted individuals with serious mental illness (Broner et al., 2004; Steadman & Naples, 2005; Hoff et al., 1999; Case et al., 2009)
2. Reduce the number of subsequent arrests compared with the period prior to diversion or compared with non-diverted individuals with serious mental illness (Herinckx et al., 2005; Case et al., 2009; Lamberti et al., 2001)
3. Cause no additional risk to public safety when diverting individuals with mental illness on felony or violent charges in comparison to people charged with misdemeanors or non-violent offenses (Steadman & Naples, 2005; Naples & Steadman, 2003)

4. Reduce costs to the criminal justice system by shifting supervision responsibility from institutional corrections to community corrections and by placing the onus on community-based services for the provision of treatment services and supports (Ridgely et al., 2007)

For specialized policing responses, research has found that

1. On-site resolution is the most common result of an encounter between a CIT officer and an individual with mental illness (Skeem & Bibeau, 2008).
2. CIT is least likely to resolve a situation through arrest compared with other specialized responses (Steadman et al., 2000).

### Community-based Services as the Key to an Effective Program

For participants in a jail diversion program to achieve improvements in overall mental health, they must have access to services that are comprehensive and appropriate to their needs. Moreover, these services

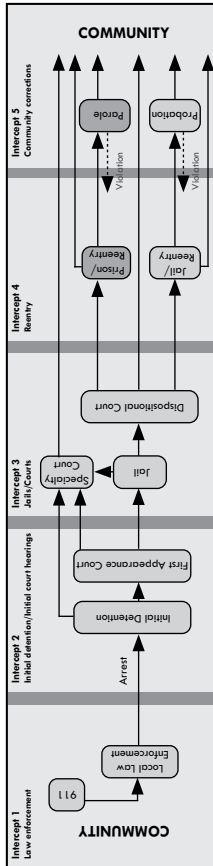


Figure 2. Sequential Intercept Model



must be of the highest quality. People with mental illness who come in contact with the criminal justice system have multiple, complex service needs. Many have not received mental health services or have been non-adherent with treatment, especially with regard to medications. Homelessness, unemployment, co-occurring substance use, experiences of sexual and physical abuse, and serious medical illnesses are common.

Three factors relating to community-based services are important for diversion programs to keep in mind:

1. Assuring access to care: People enrolled in diversion programs have many service needs that, if not met, will reduce their likelihood of success in the community. This is the first element for diversion programs.
2. Assuring quality of care: Effective services are not just any services. They must be tailored to individuals' particular needs and be research based.
3. Assuring adherence to care: Adherence has two dimensions, one for the person receiving

services and the other for the agencies providing services. It is necessary to assure through supervision that participants are complying with the terms of treatment and through oversight that treatment providers are delivering quality care.

The National Leadership Forum on Behavioral Health/Criminal Justice Services (2009) has identified an Essential System of Care (ESC) for justice-involved individuals with mental illnesses. ESC is split into two phases, with Phase I involving essential services that are less expensive and typically easier to establish than services in the following phase. Phase II services are just as essential, but are often implemented after Phase I services have become operational.

## **Phase I**

- *Forensic intensive case management (FICM)* is designed for justice-involved people with multiple and complex needs, and it features services provided when and where they are needed. FICM focuses on brokering rather than providing

services directly, making it less expensive than Assertive Community Treatment (ACT). For a brokered service model to be effective, communities must have adequate and accessible services to which individuals can be linked. What makes these services forensic is the savvy of providers who understand the criminal justice system and the effort needed to achieve public safety objectives.

- *Supportive housing* is permanent, affordable housing linked to a broad range of services, including treatment for mental and substance use disorders. Supportive housing can significantly decrease the risk of recidivism and is less costly on a daily basis than jail or prison. Unfortunately, affordable housing is in short supply in many communities, and people with drug-related criminal histories often have trouble securing public housing assistance. Housing for people released from jail or prison must

balance the need for supervision and the provision of social services.

- *Accessible and appropriate medication* supports continuity of care for individuals with mental illnesses whose treatment often is disrupted when they become involved in the criminal justice system. It is imperative that people with mental illnesses and co-occurring substance use disorders have access to the right medication at the appropriate dosage for their condition, as determined by the individual together with his or her clinician.
- *Peer support services* can expand the continuum of services available to people with mental and substance use disorders and may help them engage in treatment. Forensic peer specialists bring real-world experience with multiple service systems and an ability to relate one-on-one to people struggling to reclaim their lives.

## Phase II

- *Integrated treatment for co-occurring disorders* is essential for the majority of individuals who have both a mental illness and a substance use disorder. Integrated treatment approaches have been associated with reduced recidivism and increased rates of attaining abstinence and recovery.
- *Supported employment* is designed to help an individual select, find, and keep work. It is designed to place people in competitive work settings without extensive preparation, with services offered during the job search process and continuing during employment, based on the principle that everyone can be productive in the regular workforce.
- *Forensic Assertive Community Treatment (FACT)* is an adaptation ACT that focuses people who are in contact with the justice system. FACT differs from ACT in several ways: a goal of

FACT is the prevention of arrest and incarceration, it only serves people with criminal histories, and the majority of referrals are from criminal justice agencies.

- *Cognitive-behavioral therapies* involve recognizing current, destructive patterns of thinking and behaving, then replacing them with more realistic or helpful ones.



### **III. How to Get Started**

#### Bring the Right People to the Table

Stakeholders are individuals and representatives of organizations who have responsibility for, investment in, or will be impacted by the operation of a diversion program in their community. The specific stakeholders vary by jurisdiction, but typically they will include the following:

- Local judges and magistrates
- Law enforcement officials
- Jail administrators
- Jail mental health providers
- District attorneys and prosecutors
- Public defenders
- Pre-trial service providers
- Probation officers
- Community mental health and substance abuse treatment providers/administrators
- Health service providers
- Local and regional foundation program officers



- Housing and social service providers
- Elected officials (mayor, county commissioners, legislators, etc.)
- Consumers and consumer advocacy groups
- Family members
- Victim advocates
- Veterans Health Administration's justice outreach coordinators
- Benefits specialists

Make sure to include representatives of other diversion programs that may be operating in your community. Your goal should be to enhance the services each program provides. If a Crisis Intervention Team or Mental Health Court is already operating, make sure to widen the net by focusing on a different target population or intercept point and to include members of these programs in the stakeholder group.

Even if you have representatives of all the agencies listed above, you may not have the people you need to make things happen. Consider what expertise needs to be represented on the committee, whose buy-in

can open doors to resources and services, and whose support is needed for the program to operate. In general, agencies should be represented by the chief executive or the executive's designee.

## Bring in a Co-Chair Who Can Represent Community Services

The ideal stakeholder group should be chaired by a criminal justice representative and a community-based services representative. In both instances, the chairs need to be strong leaders with some clout in the community and among the stakeholders. In other words, the chairs need to be change agents. Each chair needs good communication skills and an understanding of the jargon, protocols, and politics of local agencies.

Judges can be particularly effective at motivating agencies to see the shared responsibilities they have for improving outcomes for people with mental illness in the justice system. The chair from a community-based services agency needs to be an equally strong leader who understands the intricacies and politics of collaboration and service delivery.

## Hold Stakeholder Meetings at the Court

It is important to hold full stakeholder meetings in a location that is perceived as neutral. Meetings at the offices of other agencies may aggravate existing turf issues. For that reason it is important to hold stakeholder meetings at the court.

## Commit the Community to Problem-Solving Strategies

Problem-solving strategies in the courts are popular because judges can address particular problems and use their power to ensure positive outcomes and accountability. Such strategies also foster and rely on community engagement. The Center for Court Innovation (2005) has identified 13 strategies for promoting community engagement:

1. Involve community members in the planning process.
2. Assemble a community advisory board.
3. Hold community forums or open houses.
4. Gather a task force to target a specific ongoing issue.

5. Create opportunities for volunteers.
6. Develop community accountability boards.
7. Give presentations at public meetings and agencies.
8. Perform community surveys.
9. Train community members as mediators.
10. Provide the community with access to services.
11. Get the word out.
12. Let someone else open the door for you.
13. Invite the community to contact you.

## Meet People Where They Are

If you are co-chairing the stakeholder group, you may be a great deal more enthusiastic about the plans for a diversion program than most other people, including fellow members of the stakeholder group. When bringing people or agencies into the group or just generating support, remember to meet people where they are—in their thinking, in their ability to collaborate, and at their office.

## **In their thinking**

- Use the WIFM principle when pitching the diversion program. WIFM stands for “What’s in it for me?” Engaging stakeholders through the WIFM principle means selling people on the program based on how it will meet their needs.
- Do not expect full buy-in from any stakeholder until the program has been running long enough for the benefits to be palpable. Some people will be convinced of the value of jail diversion only when you are able to connect justice-involved people in your own community to treatment, housing, and supports.

## **In their ability to collaborate**

- Many agencies are so short staffed and limited in their resources that collaboration is difficult.
- Community-based providers often have long waiting lists for services—approach the issue of queue jumping carefully.

- The promise of new resources may be used to leverage in-kind resources.

### **At their office**

- Do not invite an agency to serve on your stakeholder group without talking with executive staff beforehand. Cold invitations to join the group are more likely to be rejected and agencies may not understand the initiative or your expectations for their involvement.
- Meet with executive agency staff who can make agency-level decisions and personnel who can manage the implementation of those decisions.

## **Commit to Provide Quality Treatment and Services**

Services are not one size fits all. People need comprehensive and appropriate services, but they are not the same services for everyone. Refer to page 24 for a discussion of community-based services.

In the end, programs should be planned based on the treatment services and supports available in your

Each partner needs to appreciate how the time and resources they dedicate to the project will benefit them. Listed below are ways to approach the WIFM principle when marketing a diversion program to stakeholders.

#### **Law Enforcement Officials**

- Reduces injuries to officers and people with mental illness
- Shortens time spent accompanying people with mental illness while they are evaluated for hospital admission and on repeat calls for service

#### **Jail Administrators**

- Reduces staff injury by providing training to improve officer interactions involving inmates with mental illness, including how to de-escalate crises
- Reduces the cost of providing expensive medication and treatment services within the jail
- Opens limited jail beds for more serious offenders

#### **District Attorneys and Prosecutors**

- Increases available options for disposing of cases
- Connects people to needed services while ensuring community supervision

#### **Public Defenders**

- Increases available options for disposing of cases
- Prevents rapid cycling of clients from the street to the criminal courts

### **Community-based Health Providers**

- Reduces service interruption for divertees who were previously connected to services
- Increases individuals' stability and shortens periods of mental health crisis and the need for inpatient treatment

### **Consumers and Consumer Advocacy Groups**

- Avoids jail time
- Gains access to supports and services
- Focuses on recovery
- Reduces subsequent contact with the justice system

### **Family Members**

- Provides loved ones access to treatment, services, and housing
- Reconnects family members and other social supports
- Promotes individuals' recovery from mental illness and substance use disorders

### **Policymakers and Funders**

- Enhances public safety
- Uses criminal justice resources more efficiently
- Reduces taxpayer expenditures
- Increases public confidence in the justice system



community. This means working with providers to inventory services and to determine what services are most appropriate given your target group.

## Establish Practical Goals

Once you identify who needs to be part of your stakeholder group, you have to identify and reach agreement on desired outcomes or goals. Eventually, everyone in your group needs to be on the same page, but they are not likely to start out there. Dialogue in the first few meetings may be uncomfortable and time-consuming, but everyone needs a chance to be heard.

Consensus goals may include

- Connecting people with mental illness to services and supports that will help them to live independent lives in the community
- Reducing the frequency of contact with the criminal justice system
- Enhancing public safety through community supervision and leveraging available resources through the court

- Using criminal justice resources more efficiently
- Improving the safety of law enforcement and corrections officers and the environment in which they work
- Reducing taxpayer expenditures on criminal justice efforts that produce bad outcomes
- Increasing public confidence in the justice system
- Stretching existing resources and gaining access to new sources
- Making community members more comfortable in public places

## Network with Outside Experts

One of the best ways to learn about the strategies used by other communities and to generate greater buy-in from stakeholders is to visit other programs and to invite outside experts to present at a meeting. Even though you may know as much about diversion as an outside expert, their “outsider-ness” gives them more credibility. When you’re on a site visit, try to

arrange personal meetings with reluctant stakeholders and their colleagues in the community you are visiting to better understand their perspectives and find common ground for support.

Do not hesitate to reach out for Federal and State dollars for these visits or even to local foundations interested in these issues.

## IV. Putting It All Together

### Map the System

If your community is like most, the array of behavioral health and criminal justice agencies, and the points at which they intersect, are sufficiently complex that no one person in your planning group sees the whole picture. When you examine the pathways through which a person with mental illness and substance use disorders in contact with the justice system has to travel to get treatment and services, you begin to understand how people with multiple and complex needs fall through the cracks of fragmented systems of care.

System mapping is a tool to identify gaps, needs, and opportunities and to prioritize action steps. The goal of a system mapping exercise is both simple and profound: *to transform fragmented services into a system that is integrated and efficient.*

At its core, system mapping uses the Sequential Intercept Model to determine the key points at which people with mental illness and substance use disorders may be diverted and the critical strategies

that can be employed for appropriate services at each of the five intercept points.

When you map your service system, you will first identify where gaps exist. Based on the decisions about who you want to serve and the inventory of services they require, you will need to determine whether these services meet quality standards, exist in sufficient quantity, and will work with your consumers. You have to decide how to fill the remaining gaps, as well. The solution for each community will be different.

When mapping your system, it is important to employ a neutral facilitator who can move the group beyond individual and agency agendas and turf issues. A facilitator can lead the group in accurately portraying current processes, often referred to as “as is” maps, and in developing common goals and priorities for how they believe the process should work to achieve desired outcomes (“should be” maps).

## Role of the Stakeholder Group

The most efficient way to approach many of the topics in this section is through the formal organizational

structure of your stakeholder group. Through the group, form committees with chairpersons and facilitators who can develop an approach for a given task, which would then be proposed to the larger group.

## Adapt Jail Diversion to Your Community

Jail diversion is not an out-of-the-box model. There may be recommendations and essential elements, but programs vary on every conceivable measure. The program you develop should be based on stakeholder interest and what the gaps are in intercepting justice-involved individuals with mental illness based on your review of the system.

## Articulate a Vision—Create a Brand

A vision is broad by definition. It must be consistent with goals and objectives, which are more targeted.

Branding the diversion program is different from stating its vision, yet both reflect what your program is and its intentions. Branding is a marketing term, but in a sense marketing is exactly what you need to do to keep the program in the minds of people in your

community who need to know about it—including sources of funding and sustainability. As Stephen Bush, an attorney with the Shelby County Public Defender’s Office in Memphis, TN, put it, “When making presentations do you call your program ‘The Jericho Project’ or the ‘Post-Booking, Non-Specialty Court Jail Diversion Program for People with Mental Illness and Co-Occurring Substance Use Disorders of Shelby County, TN’? It doesn’t work if people can’t say it in two or three words. Otherwise, they won’t call it anything. They won’t even remember it.” (S. Bush, personal communication, March 17, 2008).

Brands need simple but eye-catching logos and tip-of-the-tongue names. Brand your presentations, your business cards, your promotional materials, and small items such as lapel pins. The important point is that people remember the program even if they don’t remember the details of what it is about.

## Make It Matter

Why does diversion matter? Why should anyone care about your position or proposed project? Your vision must be supported by a rationale. This rationale should be short, to the point, and based on evidence.

1. State the problem.
  - a. *People with mental illnesses represent a significant proportion of people in our jail.*
  
2. Explain why it is a problem.
  - a. *They are relying on expensive but inadequate jail mental health services—for which the county is paying.*
  - b. *They are not connected to mental health services in the community.*
  - c. *They are spending more time in jail than people without mental illnesses arrested on the same charges.*
  - d. *They will be arrested again—and soon.*
  - e. *They are difficult to serve in the jail setting—officer and inmate injuries are common.*



3. Explain what will happen if something (i.e., your diversion program) is not implemented to address the problem.
  - a. *Building a new jail any time soon?  
Without action, you may well need one.*
  - b. *These individuals will continue to be a public safety risk and to use expensive, public treatment services (emergency rooms, psychiatric hospitals).*
  - c. *Community liability is higher without the consideration of specialized responses.*
  
4. Explain why the diversion program is a solution.
  - a. *The program will connect people to the services they need—which will reduce incarceration and reliance on psychiatric hospitalization and emergency services.*
  - b. *They will be monitored by the court and report on a regular basis—which will reduce expensive and harmful incarceration.*

- c. *They will be cheaper to serve in the community—they will be enrolled in Medicaid and the daily cost of community supervision is cheaper than jail stays.*
5. Who says it is a solution?
- a. *Experts—who are not local*
  - b. *All of your stakeholders*
  - c. *The report of the Criminal Justice/ Mental Health Consensus Project (2002)*
  - d. *The New Freedom Commission on Mental Health, Subcommittee on Criminal Justice (2004)*
  - e. *The National Leadership Forum on Behavioral Health/Criminal Justice Services (2009)*

Readers can also refer to the citations in Section II on the effectiveness of jail diversion programs.

## Define the Target Group

Defining the target group involves two steps:

- Deciding on the enrollment criteria for the program
- Estimating how many people would meet the criteria over time

### **Enrollment criteria**

Determining the enrollment criteria for a project can be difficult, but it is important to define who will be served in order to estimate service needs and capacities. Your vision statement should guide the designation of enrollment criteria, but you will also need to make decisions based on agency restrictions. For example, many community mental health providers must serve people with a particular set of diagnoses (i.e., bipolar disorder, major depressive disorder, and schizophrenia spectrum disorders), who are enrolled in Medicaid, and who reside within a particular catchment area (i.e., the local municipality, county, or the region covered by the community service board). If your divertees don't

match those criteria, then they won't receive public mental health services.

Look at the target population across three domains: demographic, clinical, and criminal justice.

### **Figure out who meets the enrollment criteria**

Once you have determined who the program will accept, you will need to estimate the number of people who could participate in the program at any given time. For example, you may want to look at administrative data collected by the jail during intake or at the characteristics of probation violators in your county.

### **Start small and adjust as needed**

As the program starts enrolling people, you will discover a number of things that don't fit or don't make sense. The best thing to do is to start small and meet often so the kinks can be ironed out. Be willing to tinker and change the program as needed. Once the program is running

relatively smoothly you can focus on increasing enrollments.

## Determine the Path of Diversion

Now that you have established the big ideas for the program (vision and rationale), as well as determined some of the nitty gritty (measurable goals and target population), it is time to think of how people will be identified and move through the program from screening to graduation.

- How, where, and when will you assess potential participants?
- How long will they spend in your program?
- Who will coordinate the program?
- How will you supervise participants, and who will be responsible for doing so?
- What consequences will you impose for noncompliance?
- What will be the disposition of the case when participants complete the program?
- What will happen if they don't?

## Establish Formal Protocols

Develop formal protocols that spell out the answers to all of the questions offered in the section on page 52, *Determine the Path of Diversion*. When people have questions about the agreed-upon approach to an issue, they can refer to the protocol.<sup>1</sup>

## Establish Formal Agreements

Memoranda of understanding (MOUs) are formal agreements between public service agencies that can facilitate service delivery through cooperative efforts. An MOU or interagency agreement is a good way to formalize what the partners in your collaboration have agreed to do.

## Information Is Your Ally—So Share It

Information sharing is important for program planning and well-conceived service provision.

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1 A good example of this protocol is the San Francisco Behavioral Health Court's policies and procedures manual [http://www.sfgov.org/site/uploadedfiles/courts/divisions/Collaborative\\_Justice/BHC\\_policy-procedures\\_feb09-revised.pdf](http://www.sfgov.org/site/uploadedfiles/courts/divisions/Collaborative_Justice/BHC_policy-procedures_feb09-revised.pdf)

Regulations guarding the privacy of records still offer some avenues for sharing that information.

### **Review the regulations**

Review the relevant State and Federal laws that govern the exchange of health information between mental health providers and law enforcement. Although regulations vary by State, a release of information signed by the participant will probably be required for health information to be shared beyond a particular service provider. While the Federal Health Information Portability and Accountability Act (HIPAA) privacy rule makes some exceptions for the exchange of information with correctional facilities or law enforcement, expect State regulations to be stricter. Keep in mind that Federal statutes for the regulation of substance abuse treatment records are more stringent than HIPAA.<sup>2</sup>

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2 For more information about the HIPAA privacy rule, go to [http://www.gainscenter.samhsa.gov/pdfs/integrating/Dispelling\\_Myths.pdf](http://www.gainscenter.samhsa.gov/pdfs/integrating/Dispelling_Myths.pdf)

## **Develop information-sharing protocols**

The stakeholder group or a subcommittee established for this purpose should review or develop information-sharing protocols, including the development of a standardized release of information form that meets Federal, State, and local requirements. A written consent form (release of information) should state the purposes for which the requested information may be used, the period for which consent is valid, and the parties with whom it may be shared.

## **Plan for Services**

Planning for services and determining their availability are essential to the success of any diversion program. Regardless of whether your organization has the resources to enhance the level of community-based mental health and substance use treatment services available to jail diversion consumers, the stakeholder group must be knowledgeable about

- The services that are available compared with the services needed



- How services are organized, delivered, and financed
- Service eligibility criteria
- What services are deemed to be most effective

## Identify Key Positions

Staff positions required to operate jail diversion programs include mental health practitioners to screen and assess individuals' clinical eligibility, case managers to broker services, and boundary spanners to coordinate the diversion process.

The key roles of jail diversion staff include

- Screening and assessment
- Helping participants access benefits
- Linking participants to treatment and services
- Educating and training other organizations' leaders and staff about the needs of jail diversion consumers
- Helping participants navigate the criminal justice system

- Assisting participants with making the transition to mainstream community-based services

### **Create boundary spanners**

Boundary spanners go by many names and operate at different levels in a program. Yet they share the same basic purpose: to manage interactions between different systems or agencies—mental health, substance abuse, and criminal justice. Each of the organizations that participates in your jail diversion program has its own goals, policies, jargon, and organizational structures, and managing the interactions among them is a complex task. Boundary spanners understand these differences and how to navigate the formal and informal protocols of agencies within these disparate systems. Credibility within these systems is a requisite for the job

### **Prioritize Your Investment of Scarce Resources**

It's no secret that few communities planning jail diversion programs will have all the resources they need to accomplish everything they want to do. To

estimate the cost of needed services and to locate funding for your jail diversion program, you'll need to be equipped with the information you've gathered, including the following:

- Who you want to serve
- How many potential participants you have
- The types and level of services they need
- The features of existing models you plan to adopt or adapt
- Where you want to intervene
- Potential staffing needs
- What types of services you have and which ones you lack
- How you plan to fill any service gaps

## **More effective use of existing resources**

### *Custom-Blending Funding Sources*

No single agency can pay for program coordination and the multitude of services needed by people with mental illnesses and substance use disorders in contact with the criminal justice system. Because you

need to integrate several types of services to provide comprehensive treatment, you should identify a mix of funding sources that support responses to the specific needs of your participants and reflect the way services are delivered in your community.

- By blending sources of support, you will be less sensitive to reductions in any one stream and your funding package will mirror the diversity of the services you provide.
- Blending funds may require you to shift attitudes among many of your key stakeholders.
- Programs that secure funds from several sources and blend them according to the specific needs of their localities have the best chance of bringing pilot programs to scale.

### Reorganize Existing Resources

Communities around the country have started their jail diversion efforts without any

money specifically targeted to their activities. Though you may eventually need new funds to expand or enhance your program, it's important to look at how existing resources in the mental health, substance abuse, and criminal justice systems can be reorganized to better serve the people you have in common.

- Consider sharing staff, space, equipment, or expertise.
- Fund additional full-time positions across multiple agencies, each of which covers some portion of the costs for that position.

### *Develop the Workforce*

For any approach you will need a competent workforce. Many people working in mental health services are not prepared to provide services to justice-involved individuals with mental illnesses. Cross-training between the mental health and criminal justice agencies is essential. Providers may need trainings in specific treatment interventions.

## **Securing new resources**

New resources should be sought everywhere: local, State, Federal, and private. This includes approaching your own court administration and the agencies of other stakeholders, as well as city and county executives.

### *Federal Funding*

Federal funding for jail diversion programs has been increasing for several years. Two of the major funders are the Substance Abuse and Mental Health Services Administration (SAMHSA), which is part of the U.S. Department of Health and Human Services, and the Bureau of Justice Assistance (BJA), which is a component of the U.S. Department of Justice. When looking for Federal funding, it is important to think broadly about the needs of your target population. Some grants may not be specifically directed at jail diversion programs, but that does not mean your participants would not benefit from those services. You also may want to look at

U.S. Department of Housing and Urban Development (HUD) grants and the treatment for homeless grants available through the Center for Substance Abuse Treatment (CSAT).

### State Funding

Some jail diversion programs receive funds from the State agency responsible for mental health services or correction spending. It may be worth contacting State commissioners and legislators. You can identify and request meetings with those legislators who have interests in criminal justice or mental health issues. Some States, such as California, Florida, and Virginia, have coordinated jail diversion grant programs for communities.

### Local Funding

Funds from city or county governments may be your most consistent source of support. The key to success is initiating a meeting with the city or county early in the development of your program and maintaining positive

interactions through regular contact during the implementation period. Keeping local officials involved and informed about the program's progress and outcomes helps to demonstrate its value and fosters support. Consider inviting local politicians to program graduations or offering tours of the program or affiliated service agencies. Political leaders bring an important voice to events related to the diversion program.

### Private Foundations

Many local and national foundations fund innovative, performance-driven programs, especially if the support will be used to leverage or match other resources. The process for obtaining funds from foundations varies. Most foundations have websites that include information on who is eligible for funds and on the application process, as well as lists of past recipients and project awards.





## **V. Making Sure the Program Works**

### Setting Realistic Goals and Expectations

Collecting data on the participants in your program is important for both quality assurance and performance measurement. As such, it is important to set realistic goals and to report the data in an honest and transparent manner.

### Matching the Data Collection to Goals

In Section IV we discussed measurable goals for the diversion program. Measurable goals can be related to public safety outcomes; services; costs; clinical improvement; or workforce issues, such as injuries to officers or staff and training. Assuming that you have little to no budget for an evaluation, the measures of these goals should be data that are easy to collect through record reviews and administrative databases.

Examples of goals and their related measures are provided below:

### **Descriptive measures**

- Demographic and baseline legal and clinical data that are important for describing the participants in your program
  - Age
  - Gender
  - Race/ethnicity
  - Primary diagnosis
  - Substance use disorder
  - Housing status
  - Type and level of offense for the target arrest

### **Public safety goals and measures**

- Participants will experience fewer arrests.
  - Compare the number of arrests during 12 months prior to enrollment with the 12 months following enrollment.

- Participants will experience fewer jail days.
  - Compare the number of jail days between the 12 months prior to and the 12 months following enrollment.
- Participants will experience fewer violations of probation supervision.
  - Compare the number of violations between the 12 months prior to and the 12 months following enrollment.

Data can also be collected on charge type (minor, drug, property, etc.) and charge level (violation, misdemeanor, felony) to assess differences between a period of equal length prior to and following enrollment in the diversion program. Also make sure to collect data on the target arrest that led to enrollment.

## **Program goals and measures**

- Participants will remain in the program until graduation.
  - Determine the percent of participants who remained in the program for the expected duration.
  - Calculate the percent of participants who did not complete the program (opted out or were removed).

## **Treatment services and supports**

- Participants will be connected to services and supports.
  - Determine the percent of people enrolled in the program who currently are receiving treatment.
  - Inventory the treatment services that are available and the extent to which they are being used.

- Participants will reduce the use of emergency or other high-cost treatment services.
  - Compare the number of emergency room visits or inpatient admissions in the prior 12 months to enrollment with the 12 months following enrollment.

## Housing

- Participants will have access to stable housing, if needed.
  - Calculate the percent of people without stable housing at program enrollment who have been placed in housing.

## Data Collection and Management

If you plan to measure the performance of your program it is important to decide who will be responsible for collecting and analyzing the data and determining how the information will be used.

## **Performance measurement**

If you plan to use the data on your program for research purposes, contracting with an independent evaluator will give the assessment more credibility. If the purpose of the data collection is to assess whether the program is meeting its stated goals and to justify the program to current and potential funders then you can have a staff person collect the data by adapting forms that are in use and through record reviews. Performance measurement and program evaluation are separate undertakings. According to the U.S. Government Accountability Office (2005):

Performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress towards preestablished goals. It is typically conducted by program or agency management.

Program evaluations are individual systematic studies conducted periodically or on an ad hoc basis to assess how well a program is working. They are often conducted by experts external to the program, either inside or outside the agency, as well as by program managers.

### **Collection and analysis of performance measurement data**

If you plan to have a staff person collect and analyze the data, for reasons of timeliness and cost it is important for the data to be readily obtainable. Consider the following approaches:

- Modifying existing forms and administrative databases to collect additional items that are not already collected
- Developing an automated information system that can maintain data in an organized manner, provide quick access to information, and reduce paperwork—



when such systems are in place, you may only need to add relevant fields to capture the specific information you need

## Using Data to Market the Program

Sustainability of the diversion program over the long-term means finding a mechanism for integrating the program into the general working of the community. The focus needs to be on obtaining a consistent form of funding that can be used to advance the program's goals and activities. Grants should not be relied on as the only avenue of sustainability, because they may not meet long-term needs.

Data are essential to developing support from people who make stable, local funding possible. Remember to focus on

- Local system impact
- Local relevance to other projects and missions
- How the program fits into the local criminal justice/mental health landscape

## Working with the Media

Media coverage is an important way to garner support for the program, whether through local television news, daily newspapers, or weeklies. Issue advisories and releases for events, such as the program's launch or graduations.

## The Evolving Role of the Stakeholder Group

The stakeholder group is first formed to plan a jail diversion program. Once the program is up and running, the stakeholder group must increasingly focus on quality assurance, effectiveness, sustainability, and continued leadership on local criminal justice/mental health issues. This shift in emphasis may involve forming committees to steer the jail diversion program, adding new members, and exploring the feasibility of new initiatives.



## **VI. Yes, You Can Make a Difference (from Three Judges Who Did)**

We finish with brief accounts of three judges who have lived the principles, practices, and strategies set forth in this guide.

Judge Steven Leifman

*Special Advisor on Criminal Justice and Mental Health  
Supreme Court of Florida*

*Associate Administrative Judge*

*Miami-Dade County Court*

*11th Judicial Circuit of Florida*

Before becoming a judge, I worked as an assistant public defender. I found myself frustrated by the large number of people with mental illnesses entangled in the justice system with seemingly little I could do as their advocate and counsel to help break the cycle of despair. In an effort to bring about change, I decided to coordinate a meeting of key community stakeholders who could help solve this problem. These individuals included law enforcement officers, judges, attorneys, mental health and social services

professionals, consumers of mental health services, and family members. My thought was that if we could get the right people around the table, we could work together to come up with more effective approaches to addressing my clients' needs. With great anticipation I scheduled the meeting. However on the day of the event, nobody came.

A couple of years later, after becoming a judge, I scheduled the exact same meeting. This time, everyone came. In fact, they were all five minutes early. What I learned from this experience is that judges are in a unique position to help bring individuals, organizations, and systems, which otherwise may not talk to one another, together to address complex problems. As a judge, I have been fortunate to have the opportunity to sit down with many dedicated individuals in my community and in communities across the country to engage in productive dialogues around the issue of people with mental illnesses in the criminal justice system. This, in turn, has allowed me to play a critical role in helping to bridge the gap between diverse individuals and systems, and to help develop collaborative

problem-solving approaches to a variety of long-standing community problems.

As a result of a meeting I held nearly a decade ago, my community was able to develop what have become highly effective pre-booking and post-booking jail diversion programs. We have seen significant reductions in the numbers of individuals with mental illnesses who are arrested and booked into our jails, decreased crime, enhanced public safety, fewer injuries to law enforcement officers and people with mental illnesses, and more individuals with mental illnesses engaged in treatment and recovery services. Most importantly, the revolving door that has resulted in the breakdown of our criminal justice system and wasteful government spending, which I first encountered as an assistant public defender, is finally being closed.

## Justice Evelyn Stratton

*Associate Justice*

*Supreme Court of Ohio*

I began my judicial career as an Ohio trial court judge in the early 1990s. At that time, there appeared to be few options available to address defendants who were dealing with issues related to mental illness. Mental health treatment was an issue for the jails and the prison system, not the courts, and trial judges had few available treatment options to offer probationers. I began to see that these individuals frequently returned to the criminal justice system and appeared to be stuck in a revolving door of periodic treatment and incarceration.

Once elected to the Ohio Supreme Court, I had a title and was given a forum that enabled me to share a vision with the larger community. Inspired by the separate work of two local judges who developed mental health courts, I put together in 2001 a committee of individuals from across systems and agencies to collaborate on how the courts could better address people with mental illnesses. Starting with no funding and no staff, the Advisory Committee

on Mental Illness and the Courts (ACMIC) was eventually able to provide technical resources and support to enable the number of mental health courts in the State to grow from 2 to 32, with more in the planning process. Because Ohio is not a unified court State, efforts to develop these programs have been led by locally elected judges, but with support and encouragement by the Advisory Committee.

While I have never run a mental health court, the creation and leadership of Ohio's Advisory Committee inspired change in Ohio and other parts of the country. Working with the Council of State Governments Justice Center and the GAINS Center, I helped to establish the national Judges' Leadership Initiative to give judges a collective voice. With support from the Conference of Chief Justices, I have sought to replicate the collaborative success of ACMIC with top court leadership in other States. I am now working on both State and local efforts to establish Veteran's Courts as a response to returning veterans with post-traumatic stress disorder and traumatic brain injury.



## Justice Kathryn Zenoff

*Presiding Justice*

*Illinois Appellate Court*

*Second District*

In our community in northwest Illinois, when I served as a trial judge and chief judge of the seventeenth circuit, we in the justice system knew that we had a problem with jail overcrowding. We just did not fully understand why. It took our community mental health leaders to educate us about the revolving door syndrome and the criminalization of people with mental illnesses.

And so began an important dialogue in our community. In 2003, it was evident to me that the time for talk and discussion had reached an end and that the time for action was upon us.

I willingly accepted the role of facilitator or catalyst for change on behalf of our court system and convened a 70-person Community Mental Health Task Force in Rockford to address the problem of over-representation of people with mental illnesses in our local jail and courts. The Task Force met

regularly for 18 months and studied what steps and models other communities had adopted. In February 2005, we opened a mental health court called the Therapeutic Intervention Program Court (TIP). TIP accepted referrals of people with serious mental illnesses charged with both misdemeanors and nonviolent felonies. Participation was voluntary. A multidisciplinary team was assembled to work with the defendants in the court. The Task Force also drafted and adopted protocols signed by the judiciary, the State's attorney, public defender, law enforcement, corrections and court services to coordinate their responses to people with mental illnesses. A Coordinating Council was formed to build on the accomplishments of the Task Force.

This effort represents an innovative collaboration and partnership of many stakeholders committed to a common goal. Our mission was to enhance and protect public safety, while restoring the liberty and community functioning of defendants with mental illnesses through comprehensive and therapeutic judicial intervention. The impact of TIP has been significant. One graduate wrote, "My life has undergone a shift from the constant unwellness of

most of the previous decade to a life worth living.” Part of TIP’s success, and the difference it and other mental health courts have made, has to do with the synergy of the presiding judge (my role for over two years) and the team, and the interaction of the team and judge with the defendants.

I believe that judges need to serve as catalysts for change and transformation not only in our communities, but also at the state and national levels if there is to be continued progress. And so was deeply honored to be invited to succeed Justice Evelyn Stratton and to serve as a co-chair of the BJA-supported Judges’ Leadership Initiative. It has been said that as judges we must be aware of not just the legal formalities of a particular dispute, but also the human dilemma that underlies almost every case brought before us. At its core, the law is truly about human beings and their problems. We as judges can play a very meaningful role in addressing the very human problem of persons with mental illnesses who have contact with our justice system.

## **VII. Resources and References**

### Resources

#### **Community-based Services**

National Leadership Forum on Behavioral Health/  
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#### **Community Corrections**

Prins, S.J., & Draper, L. (2009). *Improving outcomes for people with mental illnesses under community corrections supervision: A guide to research-informed policy and practice*. New York: Council of State Governments Justice Center.

#### **Information Sharing**

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## **Jail Diversion Planning**

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