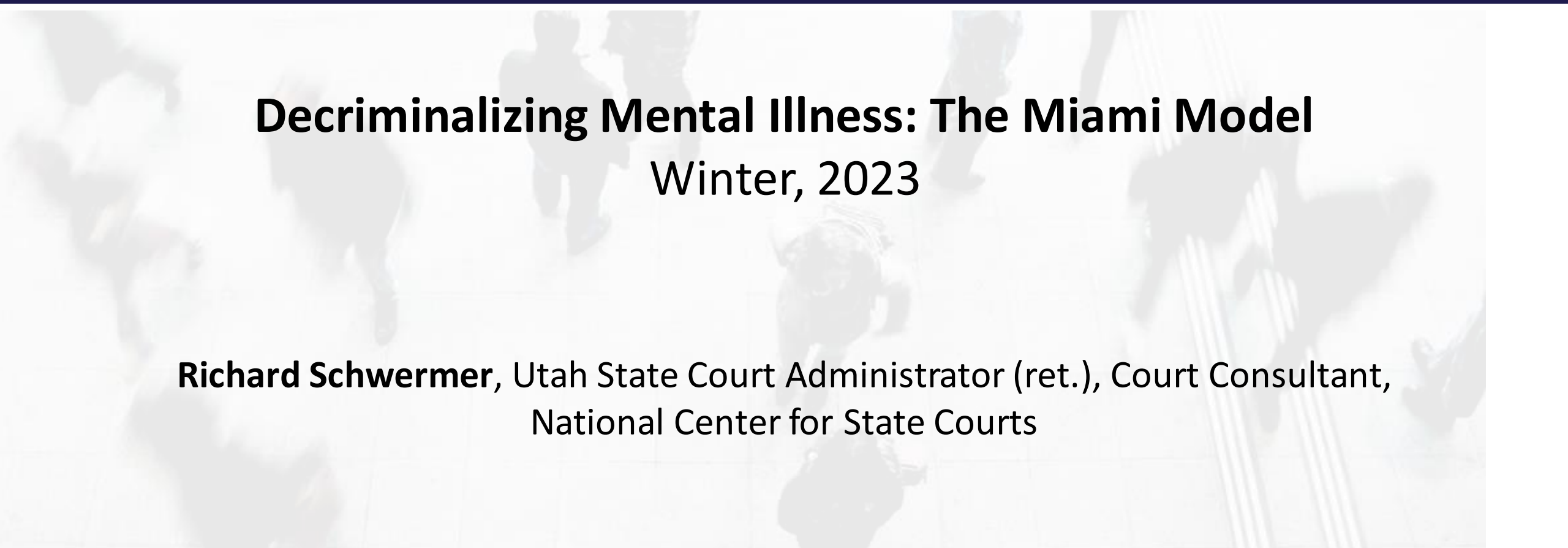




NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS



Decriminalizing Mental Illness: The Miami Model

Winter, 2023

Richard Schwermer, Utah State Court Administrator (ret.), Court Consultant,
National Center for State Courts

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

OUR CHALLENGE

Jails, prisons and the courts are the repository of failed public policy



“Approximately 1.5 million individuals with serious mental illnesses are arrested in over 2 million incidents each year. Jails have become the de facto mental health and substance use disorder care systems.”

– HON. STEVE LEIFMAN, ASSOCIATE ADMINISTRATIVE JUDGE, MIAMI-DADE COUNTY COURT, 11th JUDICIAL CIRCUIT OF FLORIDA

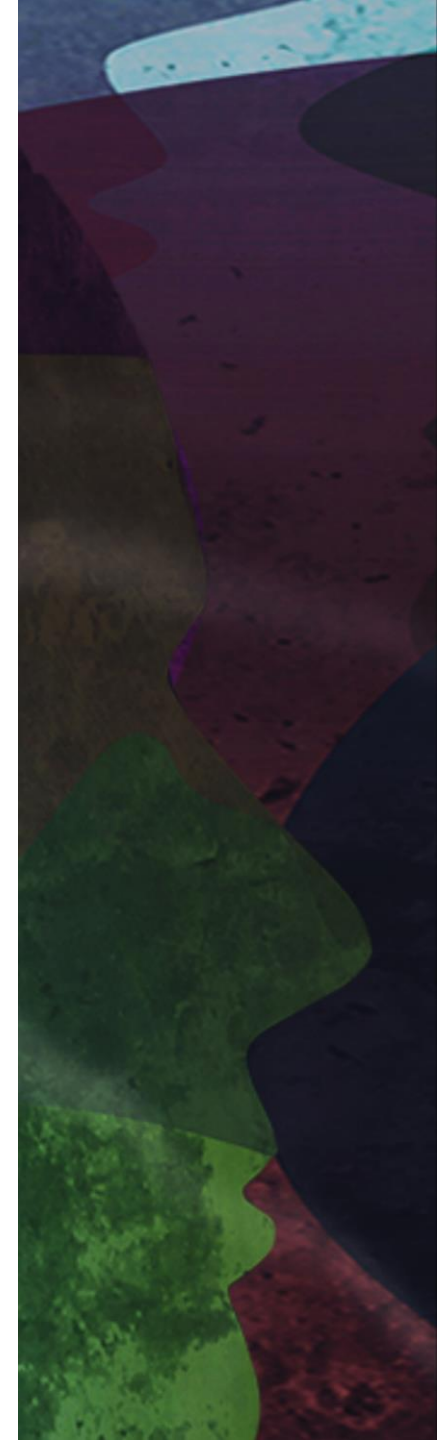
The National Judicial Task Force



The National Judicial Task Force to Examine State Courts' Response to Mental Illness

The Conference of Chief Justices and
Conference of State Court Administrators
established the National Judicial Task Force to
Examine State Courts' Response to Mental Illness to

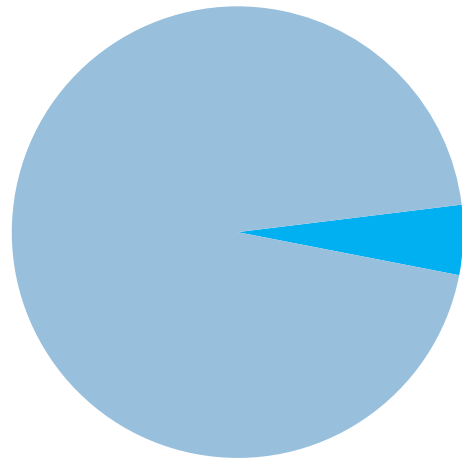
**“assist state courts in their efforts
to more effectively respond to the
needs of court-involved individuals
with serious mental illness.”**



SMI in U.S. Jails

General Population

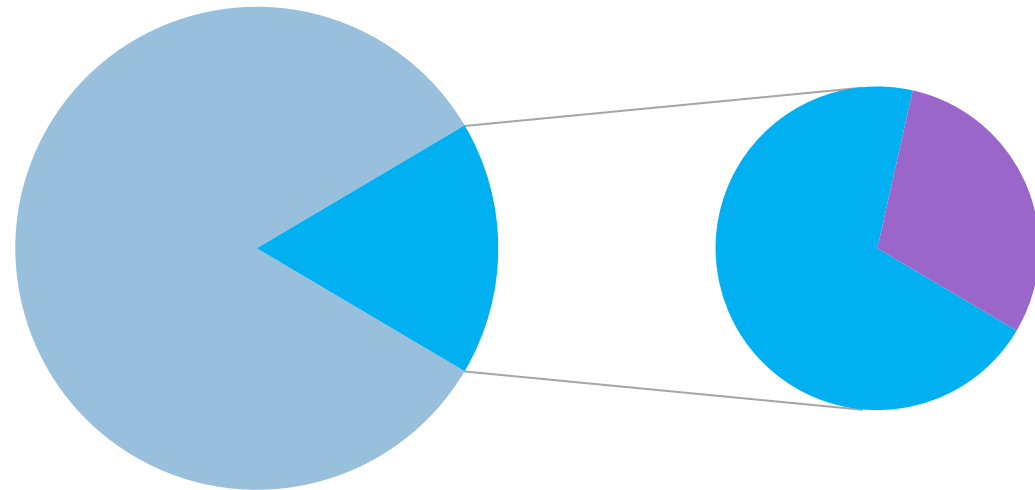
4% Serious Mental Illness



Jail Population

17% Serious Mental Illness

72% Co-Occurring Substance Use Disorder

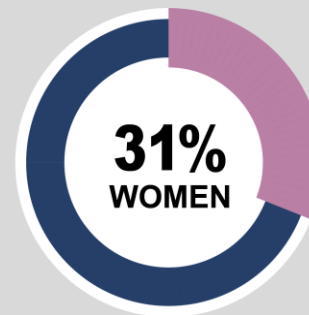
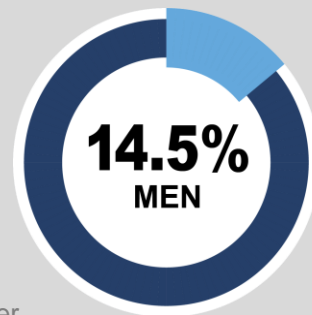


Mental Illness is Overrepresented in the Courts



serious mental illness is
four to six times higher
in jail than in the general population*

*14.5% of men and
31% of women in jails



Criminogenic Risk: Relationship to Mental Illness

Mental Illness doesn't cause crime

But...

People with mental illness have more criminogenic risk factors.

And...

You can't effectively address dynamic risk factors without treating the mental illness.



Risk Needs Responsivity

Criminogenic Risk - Probability of criminal recidivism; typically, the probability of being arrested for or convicted of any new crime or returned to custody for a technical violation

- Early onset of delinquency or substance use, prior treatment failures, prior criminal convictions or incarceration
- *Risk level informs Supervision*



Risk Needs Responsivity

Criminogenic Needs - Risk factors for criminal recidivism that are potentially changeable or treatable

- Delinquent peer interactions, antisocial values or attitudes, sparse involvement in prosocial activities, Substance Use Disorder
- Assessed criminogenic *needs* inform *treatment plan*



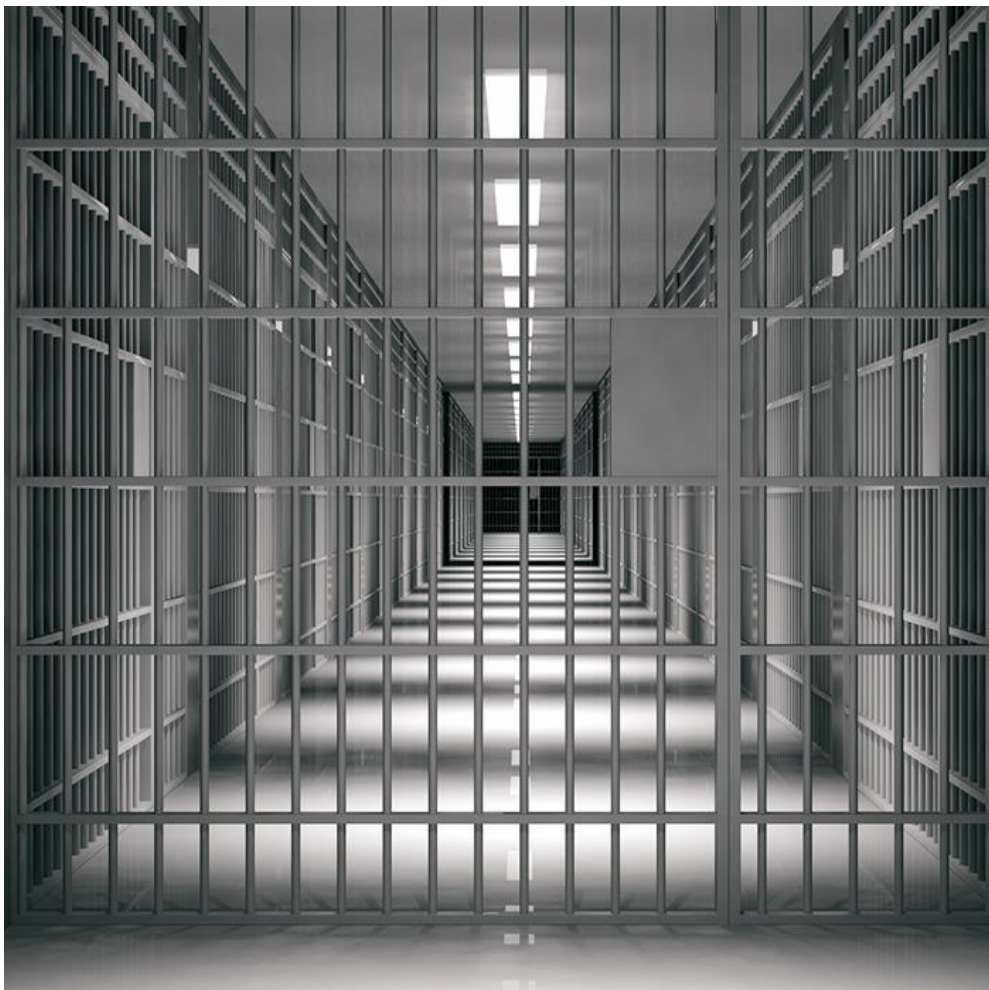
Risk Needs Responsivity

Responsivity Needs - Clinical syndromes, impairments, or social service needs that *usually do not cause crime but can interfere with rehabilitation*

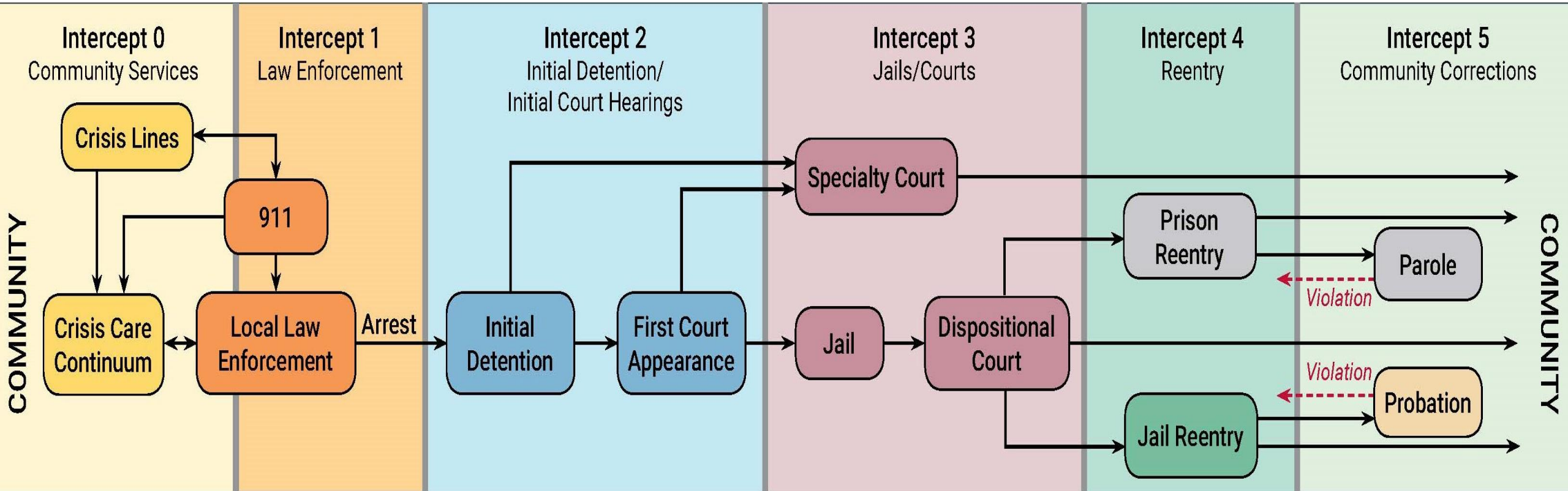
- Homelessness, serious or persistent mental illness, drug or alcohol cravings/withdrawal, PTSD, TBI, therefore often Veteran status
- Responsivity needs have to be addressed before criminogenic needs



PARADIGM SHIFT



SEQUENTIAL INTERCEPT MODEL



Intercept 0 *Community Services*

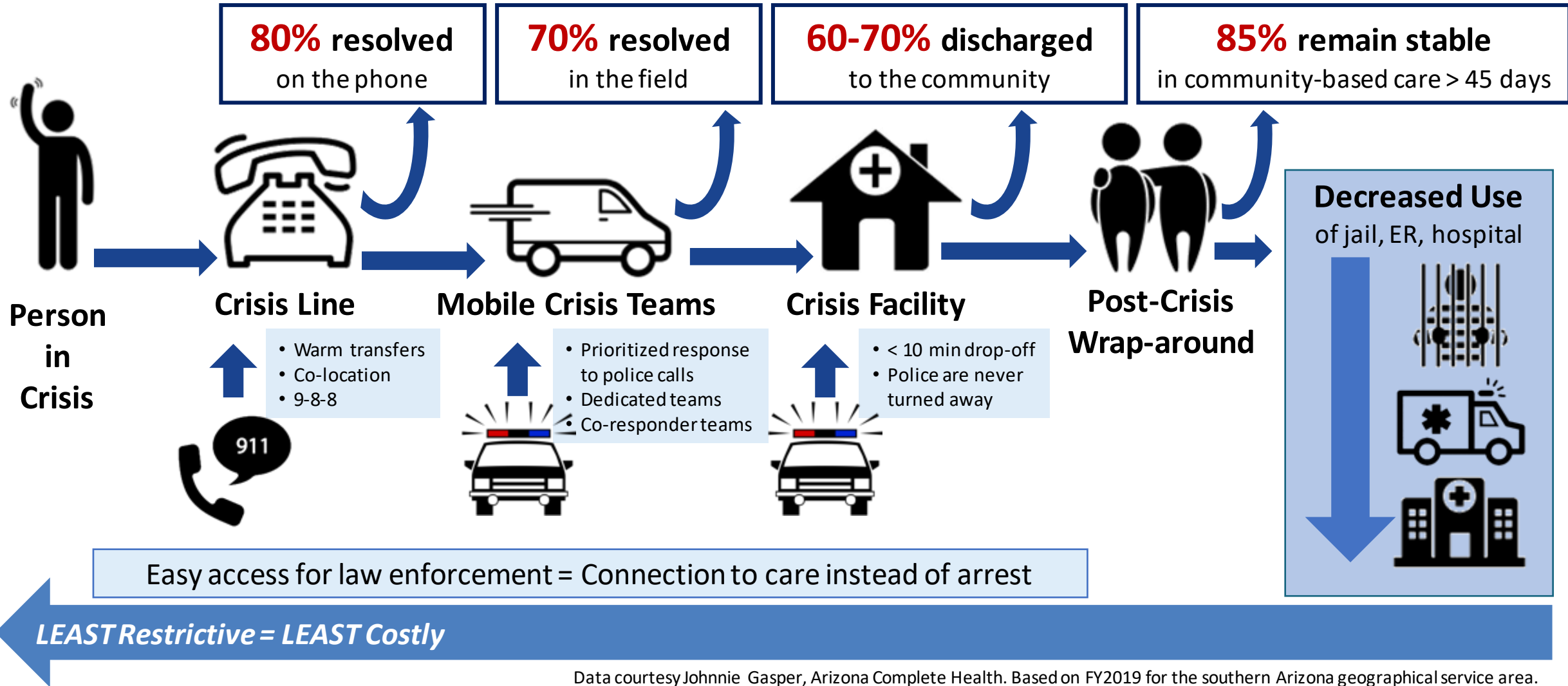
Behavioral Health Treatment Continuum

Crisis Responses

- Warm lines and hotlines
- 988
- Mobile crisis outreach teams/Co-responders
- Law enforcement-friendly crisis services
- Peer-operated crisis response support and/or respite



Arizona Crisis System



Intercept 0 *Community Services - Resources*

[CCJ COSCA Task Force Resources](#)

STRENGTHEN COMMUNITY RESPONSES AND
MINIMIZE CRIMINAL JUSTICE SYSTEM:
Comprehensive Behavioral Health Crisis Systems
| Deflection | Stop the "Revolving Door" into the
Justice System | Prosecution Alternatives



Intercept 1 *Law Enforcement*

Pre-Arrest Diversion [Deflection]

- Dispatcher training
- Specialized law enforcement training
- Specialized law enforcement responses

- Police-Mental Health Collaboration Self Assessment and Toolkit



PMHC
Police-Mental Health Collaboration

New and Refreshed Content

The Police-Mental Health Collaboration Toolkit has been refreshed with updated content! The Toolkit provides resources for law enforcement agencies to partner with mental health providers to effectively respond to calls for service, improve outcomes for people with mental illness and/or Intellectual and developmental disabilities (IDD), and advance the safety of all.

What is a Police-Mental Health Collaboration?
A PMHC is a law enforcement-based program that enables officers to respond appropriately and safely to people with mental illness. Effective PMHC programs are defined by collaborative partnerships with law enforcement agencies, mental health and IDD providers, and other community-based entities. PMHC programs allow officers to be safer, reduce repeat calls for service, minimize the strain on agency resources, and connect people with mental illness and IDD to services. Take the [PMHC Self-Assessment Test](#) and learn how to fully implement a PMHC.

What is the purpose of the toolkit?
The PMHC Toolkit provides resources for law enforcement agencies to partner with service providers, advocates, and individuals with mental illness and/or IDD. The goal of these partnerships is to ensure the safety of all, to respond effectively, and to improve access to services and supports for people with mental illness and IDD.

To access the Police-Mental Health Collaboration Toolkit, go to www.hawaii.gov/pmhc.
For questions, contact pmhc@hawaii.gov.

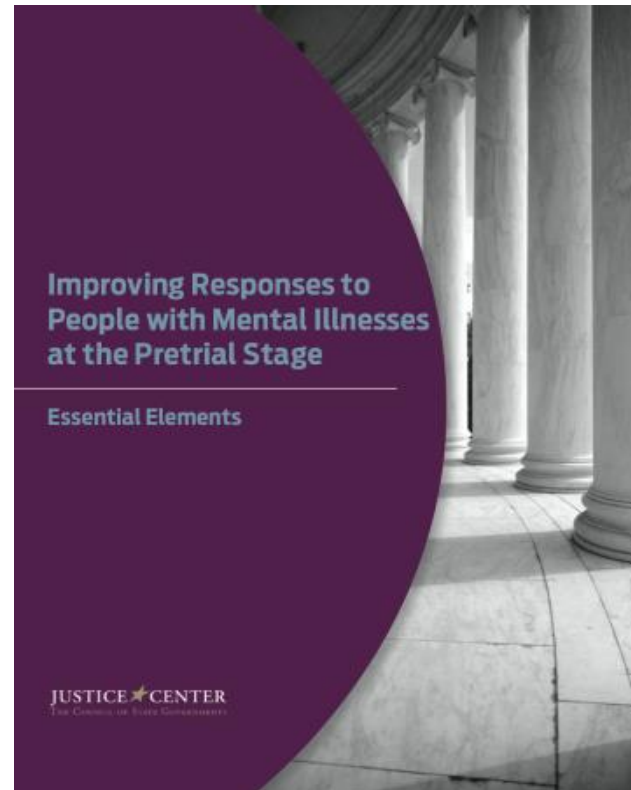
Intercept 2 *Initial Detention/Initial Court Hearing*

Diversion – Informed decision making

- Data matching
- Pre-trial release
- Validated assessments

Jail Population Review

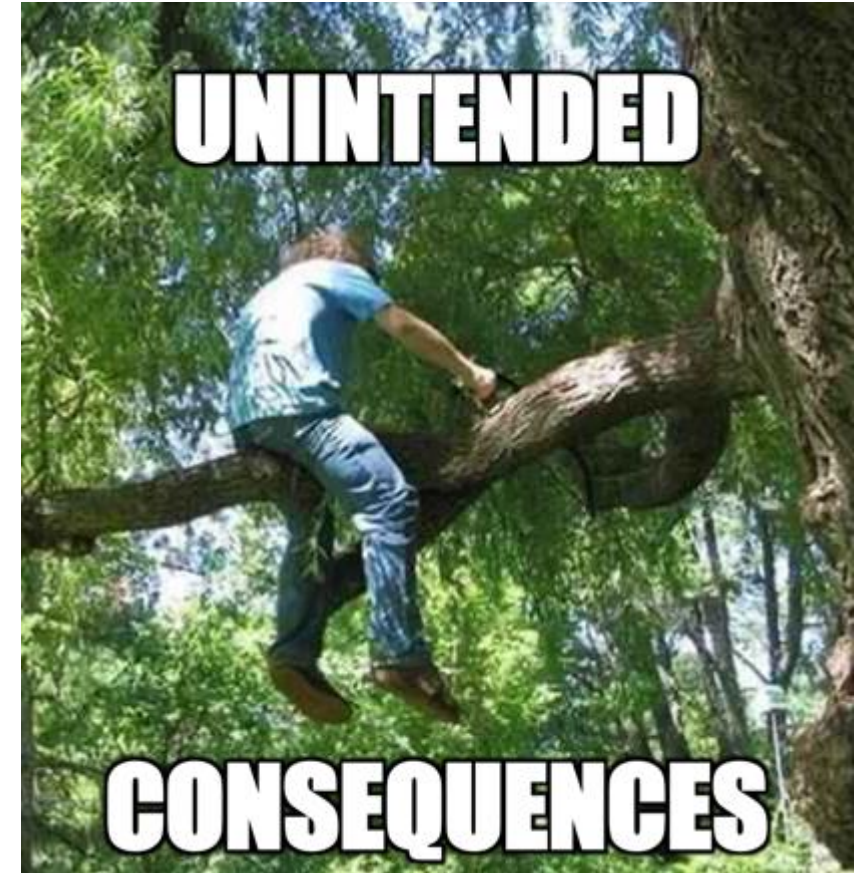
Effects of incarceration



Considering Effects of Actions on Outcomes for Individuals

Time in jail can have unforeseen consequences:

- ▶ Decompensation
 - ▶ Trauma
 - ▶ Suicide risk
- ▶ Treatment disruption
 - ▶ Loss of benefits (statutory)
 - ▶ No continuity of care
- ▶ Loss of supports in the community
 - ▶ Housing (misses rent payment)
 - ▶ Loss of employment (misses work)
 - ▶ Loss of social connections (non-criminal acquaintances/friends)



Intercept 2 *Initial Detention/Initial Court Hearing*

[CCJ COSCA Task Force Resources](#)

PROMOTE EARLY INTERVENTION AND EFFECTIVE MANAGEMENT OF COURT CASES: Screening and Assessment | Behavioral Health Triage | Jail Practices | First Appearance and Pretrial Practices | Prosecution Practices | Effective Defense Representation | Effective Caseflow Management

Intercept 3 *Jails/Courts*

Diversion again – to Treatment and Habilitation

- Enhanced case management
 - Court navigators
 - Bridges Program/liaisons
 - Boundary spanners
- Housing - Corporation for Supportive Housing, [FUSE Initiative](#), Housing First, LA
- Connect to benefits – SOAR (SSI/SSDI Outreach, Access and Recovery)
- Civil offramps



Intercept 3 *Jails/Courts*

Diversion from the traditional CJ process

- Treatment courts *for high-risk/high-need individuals*
 - Mental Health Courts
 - Co-Occurring Courts
 - Drug Courts
 - Veterans Treatment Courts



ALTERNATIVE TRACKS



High Risk

Low Risk

High
Needs

Standard Track

Accountability,
treatment, and
habilitation

Treatment Track

Treatment
and
habilitation

Low
Needs

Supervision Track

Accountability
and
habilitation

Diversion Track

Secondary prevention

PRACTICAL IMPLICATIONS

Low Needs

High Needs

High Risk

Low Risk

- ✓ Status calendar
- ✓ Treatment
- ✓ Prosocial & adaptive habilit.
- ✓ Abstinence is distal
- ✓ Positive reinforcement
- ✓ Self-help/alumni groups
- ✓ ~ 18–24 treatment court
- ✓ 9 to 12 mos. treatment (~200 hrs.)

- ✓ Noncompliance calendar
- ✓ Treatment (separate milieu)
- ✓ Adaptive habilitation
- ✓ Abstinence is distal
- ✓ Positive reinforcement
- ✓ Self-help/alumni groups
- ✓ ~ 12–18 mos. program
- ✓ 9 to 12 mos. treatment (~200 hrs.)

- ✓ Status calendar
- ✓ Prosocial habilitation
- ✓ Abstinence is proximal
- ✓ Negative reinforcement
- ✓ ~ 12–18 mos. program
- ✓ Criminal thinking (~100 hrs.)

- ✓ Noncompliance calendar
- ✓ Psycho-education
- ✓ Abstinence is proximal
- ✓ Individual/stratified groups
- ✓ ~ 3–6 mos. program
- ✓ Education (~ 12–26 hrs. or less)



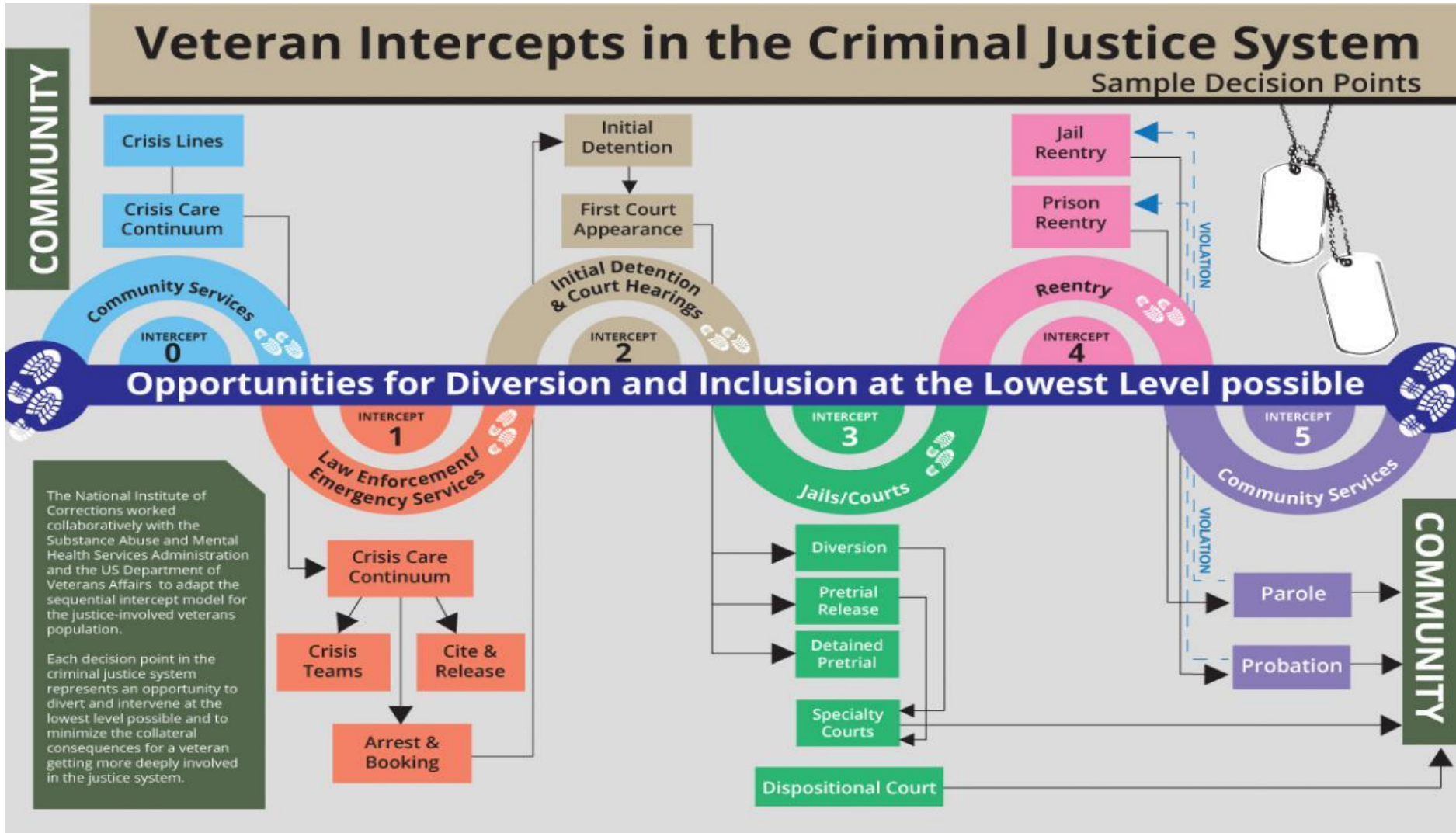
Intercept 3 *Jails/Courts*

Diversion from the traditional CJ process

- Alternatives to prosecution
 - Fair and Just Prosecution, [Improving Justice System Responses to Individuals with Mental Illness](#)
- Mental health jail liaisons, jail in-reach
- Collaboration with Veterans Justice Outreach



Intercept 3 *Jails/Courts*



Leading Reform of Competence to Stand Trial Systems: A Resource for State Courts

1. Diversion
2. Restrict referrals
3. Alternative evaluation sites
4. Alternative restoration sites
5. Revise restoration protocols
6. Rational timelines
7. Address inefficiencies
8. Training and recruitment
9. Data
10. Community-based treatment



Leading Reform:

Competence to Stand Trial Systems

(Task Force, 2021)



Just and Well: Rethinking How States Approach Competency to Stand Trial

October 2020

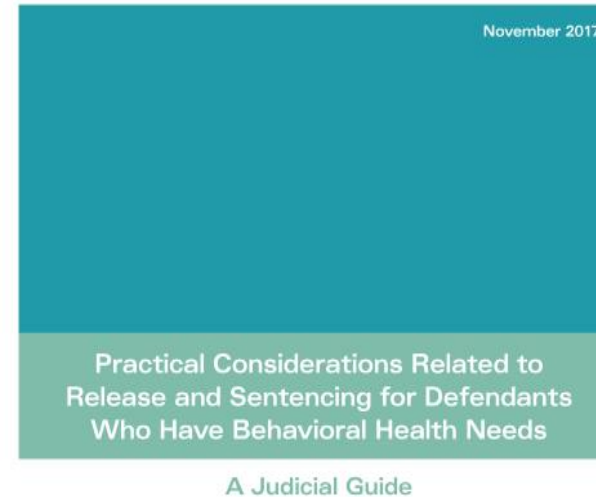


Intercept 3 *Jails/Courts*

Sentencing Considerations

- Treatment alternatives
- Special supervision options, dedicated teams

- Use reliable information
- Individualize
- Adapt to changing needs and resources



Intercept 3 *Jails/Courts*

[CCJ COSCA Task Force Resources](#)

INSTITUTIONALIZE ALTERNATIVE PATHWAYS TO TREATMENT AND RECOVERY: Diversion – A Pathways Approach | Civil Responses | Competency Dockets | Specialized Behavioral Health Dockets | Courtroom Practices | Treatment Courts | Other Pathways and Strategies to Treatment and Recovery



Intercept 4 *Reentry*

Transition planning by the jail or in-reach providers

- Supports
 - SOAR
 - Medicaid suspension/reinstatement
 - Peer Support (TF) [Peers in Courts](#)
 - Mental Health America, [Peers: Their Roles and The Research](#)
- Medication and prescription access upon release from jail or prison



Intercept 4 *Reentry*

Transition planning by the jail or in-reach providers includes:

- Warm hand-offs to providers increases engagement in services
- Policy Research Associates, [Guidelines for the Successful Transition of Individuals with Behavioral Health Disorders from Jail and Prison](#)



Intercept 4 *Reentry*

[CCJ COSCA Task Force Resources](#)

MANAGE POST-ADJUDICATION EVENTS AND
TRANSITIONS EFFECTIVELY: Community
Supervision and Violations | Transition and
Aftercare Plans | Reentry Practices



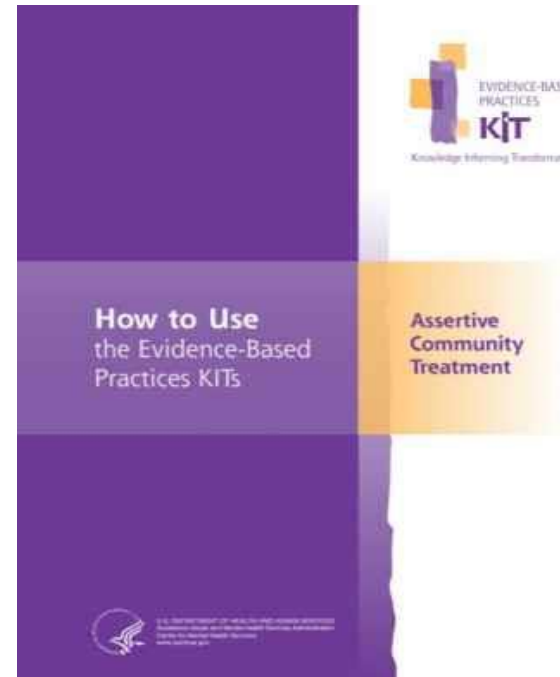
Intercept 5 *Community Corrections*

- Mental health training for all community corrections officers
- Specialized caseloads for people with mental health and substance use disorders
 - CSG Justice Center, [Implementing Specialized Caseloads to Reduce Recidivism for People with Co-Occurring Disorders](#)



Intercept 5 *Community Corrections*

- Assertive Community Treatment (ACT/FACT)



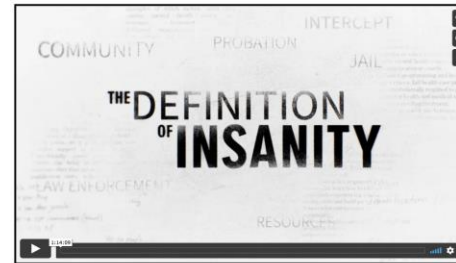
- Access to recovery supports – peers, housing, treatment, pro-social opportunities

Final Themes

- Provide resources at the front end to prevent CJ involvement
- Screen, assess, share, USE that information
- Triage - RNR
- Look for diversion opportunity at every step
- Collaborative, specialized teams
- We know what works, use the resources!



Resources for State Courts



Resources Across the Intercepts

- American Bar Association, [Criminal Justice Mental Health Standards](#)
- Major County Sheriffs of America (MCSA), [Sheriffs Addressing the Mental Health Crisis in the Community and in the Jails](#)
- National Institute of Corrections, [Veteran Intercepts in the Criminal Justice System](#)
- Michigan Mental Health Diversion Council, [Promising Practices for Jail Diversion Across the Sequential Intercept Model](#)
- National Association of Medicaid Directors, [Medicaid Forward: Behavioral Health](#)
- National Center for State Courts, [Effective Court Responses to Persons with Mental Disorders](#)



Resources Across the Intercepts

- National Conference of State Legislators, [Front End Mental Health Primer](#)
- Policy Research, Inc., [Rethinking Jails and Behavioral Health: Strategies, Challenges, and Successes Midway through the MacArthur Foundation's Safety and Justice Challenge](#)
- Policy Research, Inc., [Release to What? Behavioral Health-Based Strategies to Address COVID-19](#)
- Policy Research Associates, [Peer Support Roles Across the Sequential Intercept Model](#)
- Judges' Criminal Justice/Mental Health Leadership Initiative, [Judges' Guide to Mental Illnesses in the Courtroom](#)
- SAMHSA, [Resources on Serious Mental Illness](#)



Behavioral Health Alerts

Keep up with the latest
behavioral and mental health
resource links and information:

www.ncsc.org/publications-and-library/newsletters

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