



*On March 28 and 29, 2018, 70 public defenders from 21 states and the District of Columbia convened in Denver, Colorado for Course Corrections: National Public Defenders Summit on Mental Health and Criminal Justice. The purpose of this gathering was to build consensus regarding priorities for policy and practice reform to improve mental health, safely reduce incarceration, and increase national prosperity and wellbeing.*

In conclusion, *Course Corrections* participants observe the following:

In twenty-first century America, people with mental health issues are criminalized and stigmatized. Behaviors associated with inadequately managed mental health are mistaken for, and treated as, willful criminality. Community-based programs that support mental health and promote socially acceptable behavior are woefully insufficient, and persisting stigma is a barrier to accessing even these. Rather than improving people's health and social development by providing access to quality treatment, care, and education, society's default is over-medication and incarceration, where mental health declines further, and poor behavior is exacerbated by punishment.

The United States has only about 5% of the world's population, yet almost 25% of the world's incarcerated population. The Land of the Free confines more people in jails and prisons per capita than any other country on the planet. This is not just at a cost to our integrity as a nation, but at an expense to the national economy that exceeds \$1 trillion per year--or six percent of the nation's gross domestic product.<sup>1</sup>

More than half of all incarcerated people in the United States have a mental health issue.<sup>2</sup> The number of incarcerated people with mental health issues vastly exceeds the number of people receiving treatment in state psychiatric hospitals.<sup>3</sup>

Relying on the criminal justice system to manage mental health is neither just nor healthy, nor is it sound fiscal policy. It creates a public health crisis, exacerbating health and economic disparities affecting the most marginalized citizens. Our nation's public health, public safety, and economic wellbeing are inextricably intertwined. A resolution to this devastating crisis demands better public understanding of mental health, and a rebalancing of community investment. We must shift a significant portion of the \$1 trillion spent on the justice system to

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<sup>1</sup> McLaughlin, M., Pettus-Davis, C., et al. The Economic Burden of Incarceration in the U.S. July 2016. Concordance Institute of Advancing Social Justice. George Warren Brown School of Social Work. Washington University in St. Louis. Working Paper #CI072016

<sup>2</sup> James, D., Glaze, L., Mental Health Problems of Prison and Jail Inmates, Bureau of Justice Statistics Special Report. September 2006, NCJ 213600

<sup>3</sup> Access to Mental Health Care and Incarceration. Mental Health America. June 2018. <http://www.mentalhealthamerica.net/issues/access-mental-health-care-and-incarceration>. Accessed 4 June 2018.

health and education, where the spending will yield additional long term savings and enhanced economic growth, as well as positive individual outcomes.

Therefore, to form a more perfect Union, we recommend and support the following course corrections as priority areas for policy and practice reform at local, state, and national levels:

## **CULTURE CHANGE AND FUNDING**

**FUND** community outreach and education about mental health to reduce the stigma and clarify misconceptions about mental illness.

**EDUCATE** the public that increased resources for mental health reduces incarceration costs and improves public safety.

**ENFORCE** parity of payment by public and private insurers to increase access to quality mental health care.

**BUILD** coalitions to advocate for increased funding for mental health services including comprehensive out-patient services, improved case management services, peer support programs, structured residential placements of varied care levels in least restrictive settings, increased access to medication, supportive housing, and in-patient beds to avoid incarcerating the mentally ill.

**CREATE** mental health coordinating councils at the federal, state, and local levels to introduce best practices for the safe redirection of individuals with mental health issues out of the criminal justice system.

## **PUBLIC DEFENSE ENHANCEMENT**

**CREATE** a best practices guide for client-centered representation for people with mental health issues.

**TRAIN** defense attorneys to navigate and manage relationships with clients with mental health issues with the help of forensic social workers and other mental health professionals.

**TRAIN** specialized mental health defenders to represent persons with mental illness.

**INCREASE** funding and require that in cases involving mental health issues, public defense teams include an attorney, investigator, social worker, and mental health professional.

**DEVELOP** a public narrative around the importance and economic value of a well-funded public defense system for improving mental health outcomes for persons involved in the criminal justice system.

EDUCATE public defenders on effectively interacting with the media rather than the default to “no comment.”

## **EARLY REDIRECTION**

CREATE OR EXPAND pre-arrest redirection programs including community mental health centers, crisis centers, and supportive housing placements so that law enforcement has a place to take the mentally ill instead of a jail cell.

PROMOTE community safety, and reduce taxpayer liability, by implementing a robust mental health training program, such as Crisis Intervention Team (CIT) training, for all law enforcement officers. Mental health training and support must also be made available to guards and staff in jails, prisons, and community corrections.

CREATE dispatching mechanisms to refer emergency calls to mental health professionals, such as mobile crisis units, rather than law enforcement agencies.

INCLUDE health professionals as co-responders on mental health calls referred to law enforcement.

INCENTIVIZE law enforcement to redirect potential arrestees to community health providers in order to make better use of our justice system resources and improve outcomes.

## **POST-ARREST REDIRECTION**

REQUIRE public defense at all defendants’ first appearance, and assign specialized mental health defenders to represent persons with mental illness.

INSTITUTE pre-plea mental health dockets as an alternative to formal mental health court as a routine response to mental health cases, with a dismissal of charges upon successful completion of conditions of the pre-plea agreement. Reduce or eliminate prosecutor or complainant gatekeeping and waive costs for clients/defendants.

EXPAND judicial control over dispositions by allowing the court to dismiss or reduce the charges, or grant judicial clemency after successful completion of mental health treatment.

## **COMPETENCY**

COLLECT data and institute data-driven decisions related to the numbers of incompetent-to-stand-trial clients, length of time to evaluations, placement in treatment, trial outcomes, and dismissal.

CREATE a presumption for out-of-custody evaluations, limit in-custody evaluations to seven business days or less, and require evaluators to employ national standards of practice.

REQUIRE release on personal bond for evaluation or restoration in municipal and misdemeanor cases, and require dismissal with coordinated transition to treatment.

PLACE individuals into treatment in the least restrictive setting, offering intensive case management when appropriate, as determined by clinicians, soon after a finding of incompetence.

UTILIZE jail-based restoration only as a last resort, and only for individuals facing serious charges who pose a risk to public safety.

ENSURE that the defense can access discovery and investigate its case while competency proceedings are pending.

ENACT statutes for reasonable dismissal times, such as 30 days for a misdemeanor or less than 1 year for a felony, with immediate dismissal and seamless continuity of care after a finding that the person is non-restorable.

## **MENTAL HEALTH COURTS**

REFORM mental health courts by embracing the harm reduction model, increasing clinician input and creating programs which take into account the realities of treatment and recovery (where setbacks are a part of the recovery process).

REQUIRE every jurisdiction to have a specialized mental health court dedicate to incompetent to stand trial cases.

INCREASE participation by providing different tracks, eliminating prosecutor and complainant gatekeeping, allowing entry without a plea of guilty, eliminating costs for clients, and getting dismissals for all successful completions.

TERMINATE court supervised treatment once community-based treatment adequately assures public safety.

## **OTHER CRIMINAL JUSTICE SYSTEM REFORMS**

RE-ENVISION mental health or competency status as a mitigating, rather than an aggravating, factor for custody determinations.

PROVIDE judges, magistrates, and prosecutors, as well as bailiffs and court staff, with mental health training.

INSTRUCT trial jurors on how a defendant will be medically treated in a residential setting if their verdict is “not guilty by reason of insanity” (NGRI).

## **POLICY REFORM**

REVIEW the penal code and reclassify offenses of poverty to non-criminal violations.

REMOVE people from the criminal justice system by creating statutory immunity for a client whose illegal behavior occurred during a mental health crisis.

ELIMINATE sex offender registration and residency restrictions for people found not guilty by reason of insanity and other similar adjudications.

ABOLISH the “guilty but mentally ill” verdict.

ENACT a law that requires reduction of possible sentence upon finding that the person is severely mentally ill.

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