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Mental Health in the Criminal Justice System

What to Expect When An Individual is Arrested or Incarcerated

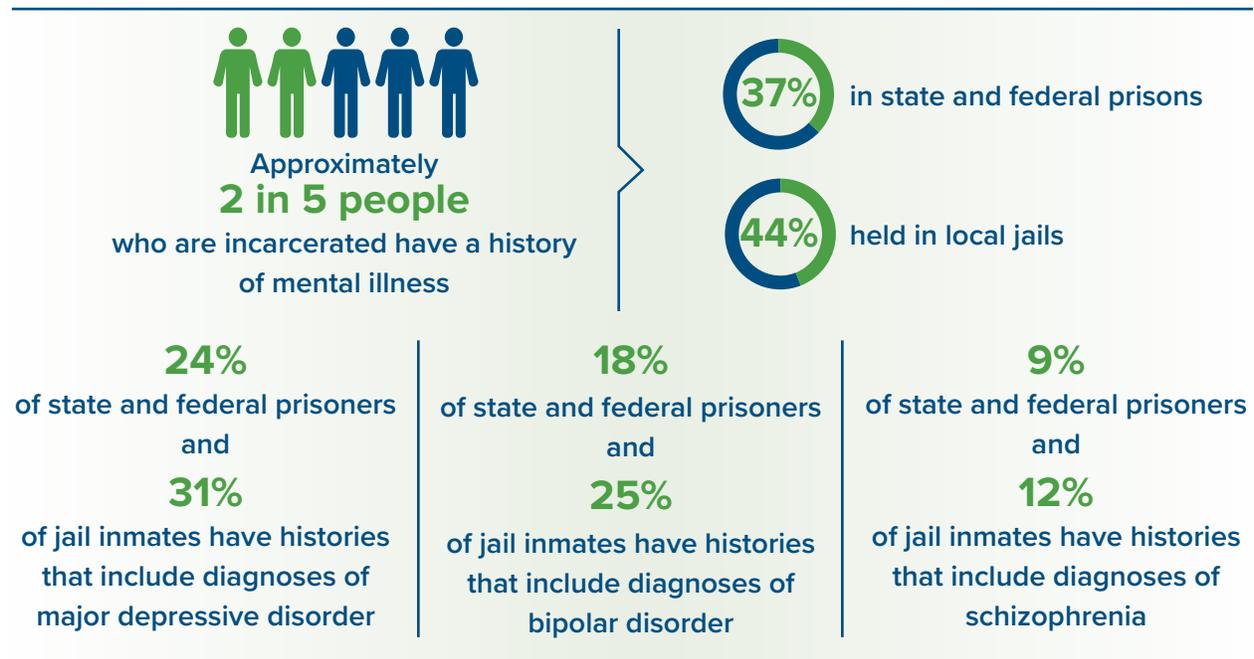


A GUIDE FOR CLINICIANS

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Individuals who have serious mental illness (SMI) are involved in the criminal justice system at higher rates than the general public. Stakeholders in the behavioral health and justice systems collaborate a great deal in an effort to reduce this trend. Despite this work, the data below show that numbers remain high:¹



Given this context, it is important for mental health clinicians to understand criminal justice system involvement of the people they serve. For example, you should know what happens when an individual you are treating is arrested, and how you can advocate for them.

The following sections provide an overview of the processes in the criminal justice system. Use this helpful guide to identify when and how you may be able to assist.

Suicide is the single leading cause of death in local jails, accounting for nearly 30% of inmate deaths.²

Why Does Law Enforcement Response Vary?

Crisis response and community response personnel for individuals with SMI are rapidly shifting, but in most communities, law enforcement continues to provide critical components of many crisis situations. When law enforcement responds to a call that involves someone who has mental illness, there are many factors that affect whether or not someone is arrested:

- Type of disturbance or crime reported
- Witness accounts and victim involvement
- Domestic situations in which officers are not afforded discretion in arrest
- Local policies regarding crisis response
- The availability of crisis centers or hospital services for diversion into treatment

Many areas have [Crisis Intervention Teams \(CIT\)](#) or other specialized mental health response teams. They are more specifically trained to divert individuals into treatment and avoid involvement in the criminal justice system. However, many times an arrest is unavoidable or there are [no resources](#) in the community for diversion. Yet there are still ways that you can provide support for an individual.

What Happens After Arrest?

Keep in mind that circumstances can vary, and much depends on the local municipality.

After arrest, an individual is usually detained in a law enforcement lockup facility or local jail to await arraignment in court. Arraignment may occur within a few hours or up to 72 hours after arrest, depending on the business hours of the court. There are typically no health services in lockup, however local emergency rooms are available for medical or mental health crises.

Formal charges are presented during arraignment and legal representation is determined through either a private or court-appointed attorney. Bond or bail may also be set. However, many people who have SMI are often unable to post bail, or may be denied the option. This makes it more likely for them to remain in custody.

In some areas, prosecutors can offer diversion programs at this point as an alternative to continuing the justice system process. After arraignment, the parties can sometimes offer alternatives to usual criminal case processing.

If available, pre-trial diversion allows the individual to have their plea and trial put ‘on hold’ if conditions for conduct in the community — including participation in treatment — are met. Successful completion can result in the charges being dismissed or lessened. If the individual does not meet conditions of the program, the individual will be routed back to court for the trial process to resume.

What Happens if Acute Symptoms are Occurring and Lead to Criminal Involvement?

In many cases, individuals who have SMI experience acute symptoms that lead to contact with law enforcement, arrest, and subsequent criminal justice system involvement.

However, obvious and acute symptoms can render someone unable to participate in the justice process. At arraignment — or at any point in the court process — attorneys on either side of the case may request an evaluation of their competency to stand trial. This can be labeled differently in various jurisdictions. For example, it may be referred to as Aid and Assist, or Fitness to Proceed, but essentially involves examining whether the individual is cognitively and functionally capable of helping in their own defense.

If competency is questioned:

- The judge orders a competency evaluation to be conducted by a forensic evaluator.
- Findings are reported to the court and the judge decides whether the defendant is able to continue with the trial.
 - If Yes: the criminal case proceeds as usual
 - If No: the judge orders treatment to restore competency
- Restoration treatment can occur in a variety of settings. It is most often conducted in state hospitals, though increasingly there are programs for restoration services in the community (if bond or bail is granted). Some states have restoration programs in jails.
- The goal of restoration treatment is to help the individual stabilize and understand their role as a defendant in the criminal process and participate in their defense.

For some people, the process of evaluation, treatment, and court determination of competency can cycle multiple times before a judge rules that the criminal case can resume or that charges should be dismissed. Repeated cycles can result in detainment and delays far beyond what a guilty verdict might portend. If charges are dismissed or if the defendant is never found competent to stand trial on the charges, civil commitment is also a possibility, assuming qualifying criteria are met.^{3,4}

What Happens if an Individual is Found Guilty?

A guilty verdict may have several possible outcomes. These include a period of incarceration, release due to time-served and/or probation with supervision and conditions. Many regions offer other methods of diversion (or “alternatives to incarceration”) at this point, such as probation via participation in a mental health, drug, or veterans treatment court program. This is known as deferred adjudication.

These programs consist of specialized court dockets that provide [problem-solving treatment models](#) in lieu of criminal court processes. Participation is voluntary and typically in the post-plea versions, requires a guilty or no contest plea. However, very often a judgment of guilt is not yet entered as the individual participates in a treatment plan. The actual criminal processes or need for a plea or a deferral decision may vary across jurisdictions.

In specialty court dockets, the treatment plan developed through court program staff is supervised by a judge, with clear guidelines for adherence, accountability, and success. As noted, in many cases, successful completion of treatment and program requirements leads to the dismissal of charges, which can mean that no conviction goes on the official record. This is often one of the incentives of participation. However, specialty courts can vary among regions, so it’s important for clinicians to learn about local processes to better understand how they can help support their clients.

When diversion isn’t available or possible, guilty verdicts often result in jail or prison terms, depending on the length of the sentence received. Typically, incarceration for less than a year is served in jail facilities, while longer sentences are served in prisons, which are typically larger

facilities housing individuals serving sentences of more than one year. Purpose and capacity differences between jail and prison facilities mean that factors related to housing and health care also differ.

These factors further vary by state, and even locality. However, mental health care is constitutionally guaranteed during incarceration, and has been affirmed in multiple landmark cases. As a result, basic standards for care are required. Multiple national organizations have formal policies on mental health services in correctional settings. This includes the [American Psychiatric Association](#) and the [National Commission on Correctional Health Care](#), among others.

Standards for mental health services in correctional settings follow several basic guidelines, including:

- Intake screening for mental health and referral
- Mental health evaluations for positive screenings
- Mental health treatment, including crisis intervention and acute care
- Community reentry and transfer planning
- Suicide prevention programs

What Can I Do to Help My Client?

Usually when a person is incarcerated, existing relationships with their mental health providers come to an end. Individuals move out of the community mental health system and into the correctional (also known as forensic) mental health system. This is especially true for long-term incarceration.

However, at various points in the criminal system process, there are opportunities for you to support and advocate for your client.

- During the pretrial phase or onset of their jail sentence, you may be able to discuss treatment with the jail staff. This can sometimes be arranged by the attorney who represents the individual.
 - Absent an emergency, you need to have a signed release due to privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA) and Title 42 of the Code of Federal Regulations (CFR) Part 2.
 - Ask if they are willing to sign a release of information to allow for information sharing among community and jail clinical providers.
 - Provide information on current medications and identify likely duration of incarceration to determine how and whether you can assist with continuity of care.
 - Provide support or resource options to the family of the individual.
- If the individual is awaiting trial, you can help your client create a plan to manage their mental health, in the event they receive a jail or prison sentence.
 - Mental health screening occurs during the jail intake process. Encourage your client to provide open and honest responses.

- Remind them to request a referral for mental health services during intake and ask about processes for ongoing treatment.
- Remind them to ask the jail’s mental health staff for instructions on what to do if they experience a crisis or have difficulties with medications.
- ☑ You can also work with the individual to understand their arrest and experience with the justice system. This includes methods for coping, managing trauma, and maintaining hope. These conversations can occur at any point, including after release from incarceration.
- ☑ Other important focus areas involve the individual’s family and social support network. Discuss ways to maintain relationships pre- and post-release. This includes effective communication and rebuilding trust.
- ☑ Work with them to understand the importance of post-release support. Help them develop a plan in the event that they experience problems with reentry. Find out if you’re able to connect with them prior to release, and whether or not you’re able to help support reentry.

Community reentry is often outlined through a process for those who are near their release. However, release planning can be complicated by little advance notice or a lack of community resources. This includes reentry programs that are often unsubstantial.

This is an area of concern. The risk of re-arrest rises when individuals are released with limited support. Factors such as access to treatment and medication, housing, and lack of income can result in decompensation, homelessness, and re-arrest.^{5,6}

In addition, a lack of family and social support is impactful.⁷ Stigma, disrupted relationships, and resulting social isolation can lead to relapse of substance use. All of these factors have an impact on whether or not a person reoffends. Medical risks upon release from a jail or prison can also be high.

The risk of death for prison inmates within the first two weeks of release is high: ^{5,6}



Overdose is the leading cause of death among recently released inmates, followed by homicide and suicide.



As time passes, overdose remains the leading cause of death, followed by chronic health conditions such as cardiovascular and infectious diseases, as well as cancer.

Studies show that participants in reentry programs benefit when the programs address practical areas along with social support and health factors. There are three general areas that can be referred to as ‘recovery capital’:⁶

- **Structural supports** – These include housing and employment which are critical for stability, relapse prevention, and overcoming stigma and discrimination.
- **Supportive relationships** – This starts with case workers who are non-judgmental and empathetic. They can help with how to improve interpersonal relationships, promote pro-social identity formation, and boost self-efficacy.
- **Continuity of care** – This includes reactivating Medicaid, other health insurance options, or community mental and medical health services to access ongoing care.

Many communities employ a model known as FACT, or Forensic Assertive Community Treatment. FACT uses the ACT model of a multidisciplinary team. It includes additional focus on preventing incarceration and repeated justice system involvement. This can be a helpful approach for ensuring key areas of treatment and support are met.⁸ If your community does not offer FACT teams, find out what types of services are available to support individuals upon release.



Reentry programs should combine practical resources and empathetic support.



They should start before release and extend for a lengthy amount of time post-release.



This can be vital to help prevent the recurrence of acute symptoms of mental illness, substance use relapse, and re-arrest.

How Do I Re-Approach Treatment if the Individual Returns to My Practice?

Therapeutic relationships should address needs, risks, strengths, and goals. When this happens, it can help individuals develop insight and build skills for ongoing success, and help reduce the risk of rearrest. This is an important part of your client's motivation to participate in continuity of care. If you are able to resume treatment services, it is critical have an honest and non-judgmental conversation about these areas.

Here are a few other areas to consider:

- ☑ Involve other staff members in case discussions if you or they have any doubts about working with this individual again.
- ☑ Support staff members who may have concerns and plan ways to address any uneasiness. This includes discomfort among the staff or the returning individual. Stigma can make it difficult for the client to return to your office or clinic after incarceration.
- ☑ It's important to periodically assess for new or emerging psychiatric or clinical issues. This includes issues related to the traumatic and life-changing experience of arrest and incarceration.

- ☑ Remain aware of potential risks:
 - Social isolation
 - Recurrent symptoms, including a return to substance use
 - Challenges acquiring medication
 - Suicide or violence
- ☑ Remain aware of the potential for re-arrest. Help the individual develop emergency plans for a crisis and continuity of care. Include how to maintain updated release forms and other methods to ensure that they share information.
- ☑ Help the individual develop added resources for structural and social supports. This includes family and peer support.
- ☑ Help the individual build strong problem-solving and self-advocacy skills.



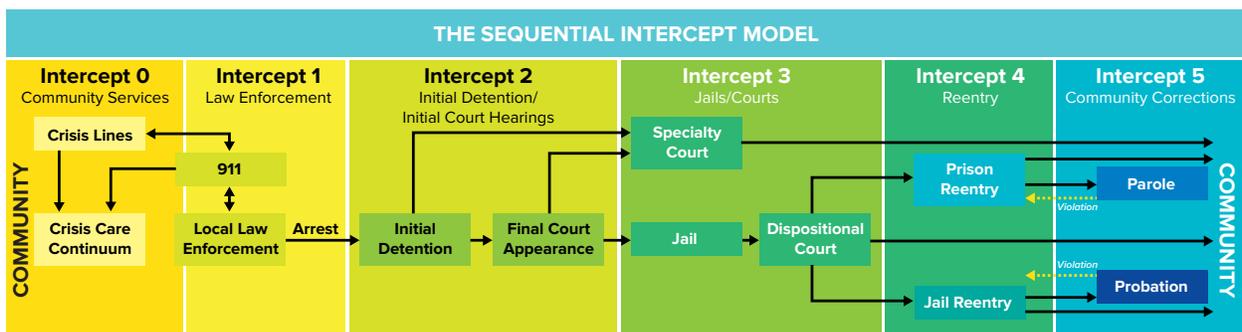
Peer and mentor support helps:

- ✓ Reinforce pro-social behavior
- ✓ Assist with substance use rehabilitation
- ✓ Provide motivational and therapeutic benefits

How Can I Help Improve Outcomes in My Community?

It is important to know the laws in your state and be aware of changes in policy. This not only helps improve your response to your own clients, but it also helps you support local efforts to improve outcomes for people who have SMI and are involved with the criminal justice system.

Interaction with the criminal justice system occurs at multiple points. All of them represent opportunities to divert someone out of the courts and into treatment. Policies vary from state to state and even region to region. They evolve across time as gaps and barriers are identified.



Opportunities exist to provide input and feedback, study solutions, and develop resources and community-wide supports. Programs such as [CIT](#) and the [Stepping Up Initiative](#) bring a variety of stakeholders to the table to plan solutions and share resources.

As a member of the mental health care team, you can benefit from information and resources that reduce stigma. The same holds true for your community. When we all work to reduce stigma, it can help improve outcomes for people who have SMI. The goal is to ensure that they do not become part of the revolving door of the criminal justice system.

Here are ways you can take action right now:

- Learn about laws and policies in your state and local area.
- Curate resources that are specific to individuals who are involved with the criminal justice system.
- Find ways to advocate for them and for [improvements to the system](#) that balance treatment and public safety.

ADDITIONAL RESOURCES

SMI Adviser offers an online Knowledge Base for issues and topics related to [Forensic Psychiatry](#). It has an array of information and resources to navigate issues around individuals who are involved with the criminal justice system.

NAMI offers information for individuals and families on:

- [Navigating a Mental Health Crisis](#)
- [Mental Illness in the Justice System](#)
- [Help Not Handcuffs](#)

[Treatment Advocacy Center](#) offers information and tools for advocacy. It includes state-by-state information on laws and standards, psychiatric bed availability, and the number of people who have SMI and are incarcerated.

The Substance Abuse and Mental Health Services Administration (SAMHSA) offers resources on:

- [The Sequential Intercept Model](#)
- [Tailoring Crisis Response and Pre-arrest Diversion for Rural Communities](#)
- [Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide](#)
- [Forensic Assertive Community Treatment \(FACT\): A Service Delivery Model for Individuals with Serious Mental Illness Involved with the Criminal Justice System](#)

REFERENCES

1. Bronson J, Berzofsky M. Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12. U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics; 2017. <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>
2. Carson EA. Mortality in Local Jails, 2000-2018 – Statistical Tables. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.; 2021. <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>
3. Smith M. Restore, Revert, Repeat: Examining the Decompensation Cycle and the Due Process Limitations on the Treatment of Incompetent Defendants. *Vanderbilt Law Rev.* 2018;71(1):319. <https://scholarship.law.vanderbilt.edu/vlr/vol71/iss1/5>
4. Pinals DA, Callahan L. Evaluation and Restoration of Competence to Stand Trial: Intercepting the Forensic System Using the Sequential Intercept Model. *Psychiatr Serv.* 2020;71(7):appi.ps.2019004. doi:10.1176/appi.ps.201900484
5. Fox AD, Moore A, Binswanger IA, Kinner S. Deaths in Custody and Following Release. *J Health and Human Serv Admin.* 2019;41(4):45-84. <https://www.jstor.org/stable/26974609>
6. Kendall S, Redshaw S, Ward S, Wayland S, Sullivan E. Systematic review of qualitative evaluations of reentry programs addressing problematic drug use and mental health disorders amongst people transitioning from prison to communities. *Health & Justice.* 2018;6(1). doi:10.1186/s40352-018-0063-8

7. Swanson J. Mental Illness, Release From Prison, and Social Context. *JAMA*. 2016;316(17):1771. doi:10.1001/jama.2016.12434
8. Cuddeback GS, Simpson JM, Wu JC. A Comprehensive Literature Review of Forensic Assertive Community Treatment (FACT): Directions for practice, policy and research. *Int J Ment Health*. 2020;49(2):106-127. doi:10.1080/00207411.2020.1717054