

Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements

Policymakers and criminal justice and behavioral health professionals know that significant numbers of people with mental illnesses enter and move through local criminal justice systems every day: nationwide, approximately two million adults with serious mental illnesses are admitted into jails each year.¹ While the law of the land has made pretrial detention “the carefully limited exception”² for only those cases where conditions of release can not ensure that an individual will return to court and protect public safety, in many communities, people with mental illnesses are detained while awaiting trial at higher rates and for longer periods of time than those without these needs. This occurs despite research showing that mental illness does not necessarily increase the likelihood that these individuals will fail to return to court or commit new crimes while on pretrial release.³ New research has revealed a number of ways that pretrial detention can increase the likelihood of future criminal justice involvement, particularly for low- and moderate-risk defendants,⁴ underscoring the costs—for public safety, public health, and taxpayers—of the status quo.

The period between these individuals’ arrests and their cases being adjudicated presents a significant opportunity to safely minimize future criminal justice involvement and make needed connections to behavioral health care. Nationally, about 17 percent of people entering jails pretrial meet criteria for a serious mental illness.⁵ In addition, about three-quarters of people with serious mental illnesses in jails have a co-occurring substance use disorder.⁶ These are individuals who, by and large, are eligible to receive publicly funded health care.⁷ Many communities have found ways to make effective connections to treatment for some individuals as part of pretrial release or diversion programs, but policymakers and practitioners continue to struggle to identify and implement research-based policies and practices at this stage of the criminal justice system.

ABOUT 17 PERCENT OF PEOPLE entering our nation’s local jails for pretrial detention meet the criteria for serious mental illness. In many jurisdictions, they remain in jail for considerably longer than those without mental illnesses, even though they face similar charges and pose no more risk of flight or danger to the community than those without mental illnesses. In the meantime, they remain incarcerated at significant cost to the public and to their own chances of recovery and stability in the community.

With the support of the Public Welfare Foundation, the Council of State Governments Justice Center has worked with national experts, researchers, policymakers, and practitioners, to identify Essential Elements that can guide local system responses to defendants with mental illnesses and co-occurring substance use disorders at the pretrial stage. The foundation for these elements consists of general principles for pretrial policy and practice (see “Pretrial Justice: Core Principles”), a growing research base, practical strategies, and innovative programmatic activity.⁸ The elements are components of how effective systems respond to those with mental illnesses, including those with co-occurring substance use needs. Jurisdictions can apply these elements in a variety of ways based on local priorities, resources, and realities.

Because few communities screen all arrestees for behavioral health needs, assess the probability of their success on pretrial release, and conduct analyses to evaluate pretrial release and diversion efforts, there is a need for more research in this area. These elements suggest questions for future researchers and, we hope, will be further informed by further research in this fast-moving field.

1. Henry J. Steadman et al. “Re-validating the Brief Jail Mental Health Screen to Increase Accuracy for Women.” *Psychiatric Services* 58, no. 12 (Dec. 2007): 1598-1601.

2. United States v. Salerno, 481 U.S. 739 (1987).

3. Kristin Bechtel, Christopher T. Lowenkamp, & Alex Holsinger, “Identifying the Predictors of Pretrial Failure: A Meta-Analysis,” *Federal Probation* 75, no. 2 (Sept. 2011): 78-87.

4. Laura and John Arnold Foundation, “Research Summary: Pretrial Criminal Justice Research” (November 2013).

5. Henry J. Steadman et al., “Prevalence of Serious Mental Illness Among Jail Inmates,” *Psychiatric Services* 60, no. 6 (June 2009): 761-765.

6. Karen M. Abram, and Linda A. Teplin, “Co-Occurring Disorders Among Mentally Ill Jail Detainees,” *American Psychologist* 46, no. 10 (1991): 1036-1045.

7. The National Association of Pretrial Services Agencies, “The Patient Protection and Affordable Care Act and the Pretrial System: A “Front Door” to Health and Safety,” February 2014.

8. Following the Attorney General’s 2011 National Symposium on Pretrial Justice, the Pretrial Justice Working Group has documented research, policy, and practice developments across the country, available through the website of the Pretrial Justice Institute.

THE ESSENTIAL ELEMENTS

1. COLLABORATION

Criminal justice and behavioral health leaders, managers, and line staff actively work together to develop, operate, maintain, monitor, and improve responses to people with mental illnesses in the pretrial period.

2. TRAINING

Criminal justice and behavioral health stakeholders are familiar with legal and evidence-based practices for pretrial release, supervision, and diversion, basic concepts in both pretrial justice and behavioral health, and specific skills relevant to their professions.

3. RELEASE AND DIVERSION OPTIONS

Judicial officers and other stakeholders use a range of mechanisms for quick and appropriate pretrial release and diversion.

4. INFORMED DECISION MAKING

Judicial officers receive information that is shown to be relevant to defendants' probability of success on release to inform their decisions about release and to set the least restrictive conditions

to assure appearance in court and protect the public. Diversion is made available based on similar factors, and defendants make informed decisions to participate.

5. QUICK CONNECTION TO APPROPRIATE BEHAVIORAL HEALTH AND SUPPORT SERVICES

Mental health, substance use, and other needs are identified through screening and shared narrowly to direct defendants to appropriate treatment and services in a timely fashion.

6. COMMUNITY SUPERVISION AND TREATMENT AT THE PRETRIAL STAGE

Criminal justice and behavioral health stakeholders work together to support defendants' adherence to conditions of release and progress toward recovery and to minimize future involvement with the criminal justice system.

7. PERFORMANCE MEASUREMENT AND EVALUATION

Data are collected and analyzed at regular intervals to identify opportunities for improvement, assess quality in the delivery of treatment and supervision, and support initiative sustainability.

Pretrial Justice: Core Principles

Effective responses for people with mental illnesses at the pretrial stage build on many of the same principles as effective responses for any defendants. The following set of principles about pretrial practices is foundational to the essential elements described above.

- The practices should be fair and evidence based. Optimally, decisions about custody or release should not be determined by factors such as an individual's gender, race, ethnicity, or financial resources.
- The practices should address two key goals: (1) protecting against the risk that the individual will fail to appear for scheduled court dates; and (2) protecting against risks to the safety of the community or to specific persons.
- Unnecessary pretrial detention should be minimized. Detention is detrimental to the individual who is detained, costly to the jurisdiction, and can be counter-productive in terms of its impact on future criminal behavior.
- To make sound decisions about release or detention, judicial officers need to have (1) reliable information about the potential risks posed by release of the individual; and (2) confidence that resources are available in the community to address or minimize the risks of nonappearance or danger to the community if the decision is made to release the individual.

From *Pretrial Justice in Criminal Cases: Judges' Perspectives on Key Issues and Opportunities for Improvement* by William F. Dressel & Barry Mahoney, National Judicial College (May 2013).

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Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements is available at csgjusticenter.org.

The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. It provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities.

