



**Justice Center**  
THE COUNCIL OF STATE GOVERNMENTS

# **Stepping Up Pennsylvania**

## **Findings and Recommendations from the Behavioral Health-Criminal Justice State Policy Scan Project**



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# Introduction

Across the country, communities are struggling to address the high number of people with serious mental illnesses (SMI) cycling through local criminal justice systems. In many communities, jails have become the de facto mental health facilities for people unable to access mental health services and achieve recovery in the community. Research shows that the rate of people with SMI in jails is at least three times higher than in the general U.S. population.<sup>1</sup> People with SMI also stay longer in jails<sup>2</sup> and return at higher rates (especially for violations of community supervision conditions) than people without mental illnesses.<sup>3</sup> For many communities with limited resources and siloed law enforcement, corrections, mental health and other agency operations, this cycle will continue—taking a staggering human and fiscal toll.

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

2. E. Fuller Torrey et al., *More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States* (Arlington, VA: Treatment Advocacy Center, 2010) [treatmentadvocacycenter.org/storage/documents/final\\_jails\\_v\\_hospitals\\_study.pdf](http://treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf); F. Osher et al., *Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery*, (New York: The Council of State Governments Justice Center, 2012).

3. Agency for Healthcare Research and Quality, *Evidence-Based Practice Center Systemic Review Protocol: Interventions for Adults with Serious Mental Illness Who Are Involved With the Criminal Justice System* (Washington, DC: U.S. Department of Health and Human Services, The Agency for Healthcare Research and Quality, 2012), [effectivehealthcare.ahrq.gov/sites/default/files/pdf/mental-illness-adults-prisons\\_research-protocol.pdf](http://effectivehealthcare.ahrq.gov/sites/default/files/pdf/mental-illness-adults-prisons_research-protocol.pdf); David Lovell, Gregg J. Gagliardi, and Paul D. Peterson, “Why Recidivism and Use of Services among Persons with Mental Illness after Release from Prison,” *Psychiatric Services* 53, no. 20 (2002): 12960-6; Kristin G. Cloyes et al., “Time to Prison Return for Offenders with Serious Mental Illness Released from Prison: A Survival Analysis,” *Criminal Justice and Behavior* 37, no. 2 (2010): 175-187.

Many Pennsylvania communities are at the forefront of addressing this crisis; over half (35) of Pennsylvania's 67 counties adopted resolutions committing to reducing the number of people with mental illness in their jails (known as "county prisons") as part of the **Stepping Up initiative**—a partnership of The Council of State Governments (CSG) Justice Center, the National Association of Counties, and the American Psychiatric Association Foundation. At the local level, these jurisdictions are applying collaborative, cross-system approaches guided by data to understand the scale of the problem, employ high-impact strategies, and drive countywide system change. Examples of such strategies include implementing programs to divert people from jail, as well as using assessments to identify people with SMI upon incarceration and connect them to appropriate treatment and services, reducing their likelihood of future incarcerations and hospitalizations. Additionally, Stepping Up counties—particularly Innovator Counties<sup>4</sup>—strengthen their data collection and tracking to better understand the extent of their problem and their progress, leading to targeted action plans with system-wide impacts.

But communities can't tackle this problem alone; despite notable progress, they continue to face critical, pervasive challenges and barriers that hamper their efforts and that states—often exclusively—can help address. But states—except for those with unified corrections systems—have not historically prioritized jail concerns, as their criminal justice policy goals have understandably been focused on populations under state custody. Further, state leaders have not always known how to best approach supporting system change at the local level, what exactly counties' needs are, and how best to respond and to what degree. Recognizing this, Pennsylvania state leaders have "stepped up" to provide support, as evidenced by the creation in 2018 of the first technical assistance center in the country dedicated to Stepping Up counties.

Given Pennsylvania state leaders' interest in advancing Stepping Up goals statewide and in taking an even more active role to accelerate progress and improve outcomes for people with SMI cycling through local criminal justice systems, the U.S. Department of Justice's Bureau of Justice Assistance (BJA) selected Pennsylvania to work with the CSG Justice Center to identify and advance collaborative state-local approaches to address critical gaps and barriers that have long stymied large-scale progress in reducing the number of people with SMI in local criminal justice systems.

Specifically, with support from BJA, the van Ameringen Foundation, and the Melville Charitable Trust, CSG Justice Center staff engaged Pennsylvania leaders and stakeholders in a collaborative planning process to pilot a **state-level policy scan to better understand Pennsylvania's policy landscape across systems and identify opportunities for the state to help counties reduce the number of people with SMI in local criminal justice systems—especially jails.**

## State Criminal Justice – Behavioral Health Policy Scan

The state policy scan is a BJA-supported tool that can help states work with communities to identify solutions and reduce the numbers of people with mental illnesses and co-occurring substance use disorders in local justice systems. It can guide an assessment of a state's policy landscape and pinpoint what actions the state can take that are most responsive to the policy landscape and local needs to best position communities to move the needle. Principles advanced by the state policy scan include:

- Keep people with SMI out of the system as early as possible (i.e., prevention and early intervention) to yield better outcomes and use of resources (i.e., diverting people from arrest and jail and building connections to community care and services).
- Ensure cross-system collaboration; no one system or agency can solve the problem alone.
- Avoid unfunded mandates and give communities as much flexibility as possible while also giving states the ability to track the impact of their actions and investments.

4. The designation of "Innovator County" refers to counties across the country that are nationally recognized for their ability to accurately identify people in their jails who have SMI, collect and share data on these individuals to better connect them to treatment and services, and use this information to inform local policies and practices. As of October 2020, there are three Innovator Counties in Pennsylvania: Berks, Montgomery, and Philadelphia.

The project was guided by Pennsylvania’s Mental Health and Justice Advisory Committee (MHJAC)—a long-standing collaborative body led by the Pennsylvania Commission on Crime and Delinquency (PCCD) and the Office of Mental Health and Substance Abuse Services (OMHSAS)—that has provided critical direction, coordination, and support at local and state levels at the intersection of criminal justice and mental health.

CSG Justice Center staff conducted a locally informed, statewide criminal justice and behavioral health policy scan to determine a clear picture of Pennsylvania’s existing policy landscape, key areas to target for improvement, and recommendations for policy and practice change. This report details the findings of the scan as well as recommendations, which are rooted in best practices that lead to the reduction of people with SMI in local jails. The project and resulting recommendations are intended to advance (1) Stepping Up efforts across the state; (2) MHJAC’s mission and broader strategic planning efforts; and (3) the priorities of the governor’s office and state agencies, including related initiatives such as the Governor’s Vulnerable Populations Initiative. In addition, as the first state to undergo this strategic planning effort using the policy scan, Pennsylvania serves as a national model for other states looking to replicate this work.

The CSG Justice Center is grateful for the openness and participation of stakeholders spanning a range of systems, perspectives, and levels of government in exploring the state’s role in local criminal justice and behavioral health systems change. This was particularly important, as the various levels and branches of government and jurisdictional responsibilities involved in local criminal justice and behavioral health systems can often obscure the role of effective state policy approaches at the local level. As a result of stakeholders’ engagement and input, the recommendations in this report reflect the fact that no one system can resolve the issue of people with SMI cycling through local criminal justice and other public systems on its own. These recommendations hinge upon actions that state system actors should take in partnership with other systems and across levels of government to achieve meaningful state- and local-level impacts.

# Summary of State Policy Scan and Process

The state policy scan was developed by the CSG Justice Center, with support from BJA, to provide a structured way to assess the state's policies and guide strategies that are responsive to the most common drivers of high numbers of people with SMI in local criminal justice systems. It contains a range of policy areas and actions anchored in research and best practices across four categories that directly address the most prevalent and pressing local challenges and barriers elevated by counties across Pennsylvania and the country at large:

## 1. Strengthen and formalize cross-system collaboration

Policies that bring state and local leaders across multiple systems (criminal justice, behavioral health/health, housing, etc.) together to understand local challenges, establish shared goals, and identify opportunities for states to support local collaborative responses.

## 2. Improve local capacity to collect data and share information

Policies that equip states and localities to examine the impact of investments and target resources toward the most effective strategies.

## 3. Reduce avoidable justice system contact

Policies that focus on building opportunities to (1) respond to people in mental health crisis prior to and upon law enforcement contact, (2) divert people with behavioral health needs who don't pose a public safety risk to appropriate community-based services and supports (and supervision, if applicable), (3) ensure timely movement/processing (e.g., case processing, etc.) for people in the system, and (4) reduce the likelihood of return to the system (through reentry, community supervision strategies).

## 4. Strengthen community-based care and services

Policies that focus on ensuring that (1) sufficient capacity and access exists in the community to address people's unmet behavioral health and social service needs and (2) available services and care are accessible and include effective responses to people in the criminal justice system.

In May 2019, the CSG Justice Center formally partnered with MHJAC, whose mission for promoting evidence-based practices for people in the justice system with behavioral health conditions while enhancing community safety and well-being fundamentally aligns with the project objectives. MHJAC formed two working committees to provide formal guidance and expertise on the project. The Executive Committee provided high-level strategic guidance and expertise throughout, and the MHJAC Subcommittee provided a detailed review of project recommendations for refinement and prioritization. (See Appendix A for member lists.)

From May 2019 to January 2020, CSG Justice Center staff conducted an initial review of current statewide statutory, administrative, and judicial policies (e.g., statutes, agency guidance and reports, court rules) and examined the extent to which these policies address the four areas listed above. To gather additional information and pinpoint priority needs and opportunities, CSG Justice Center staff

- Conducted more than 40 interviews with individuals representing a diverse range of state and local perspectives, expertise, geographies, and systems—including law enforcement leaders, court professionals and executives, health administrators, agency policy directors, legislators, housing advocates, and others (see Appendix B for full list of stakeholders who were interviewed);
- Met with the Office of the Governor’s Secretary of Policy and Planning and the County Commissioners Association of Pennsylvania’s Comprehensive Behavioral Health Task Force;
- Regularly engaged with MHJAC and its members through quarterly meetings and the project’s Executive Committee and Subcommittee; and
- Consulted directly with counties through the PCCD-supported Stepping Up Technical Assistance Center (operated by the CSG Justice Center).

Based on the collective research and input from stakeholders, CSG Justice Center staff recommended focusing on three priority areas that are most directly responsive to local needs, opportunities, and scale of impact on the target population:

### **Priority Area 1**

## **Improving local capacity to collect data and share information**

Opportunities to facilitate information sharing and streamline data collection across agencies and systems.

### **Priority Area 2**

## **Increasing local diversion as early as possible**

Opportunities to reduce arrest and incarceration to appropriately keep people with SMI out of local criminal justice systems in the first place.

### **Priority Area 3**

## **Increasing local availability of and connections to housing**

Helping communities better understand, quantify, and respond to the housing needs of people with SMI who are cycling through local criminal justice systems; includes access to supportive housing for people who need it most.

From February to July 2020, CSG Justice Center staff conducted a detailed review of state-level policies that are already in place in each of the three priority areas, the extent to which they align with best practices, and how they are being implemented at the local level (if known). This review, combined with stakeholder input, informed the development of draft recommendations for MHJAC's Executive and Subcommittee consideration. With their input, in September 2020, CSG Justice Center staff finalized 15 recommendations accompanied by proposed action items that span various state agencies and identify the specific policy mechanisms, wherever possible (administrative, statutory, judicial), that policymakers may consider to enact the recommendation. (See Appendix C for full list of recommendations.) CSG Justice Center staff developed a rubric to help the Subcommittee prioritize recommendations that met the following criteria: medium to high scale of impact, low resource need, and short-term plausibility. Focusing on the prioritized recommendations will still allow the state to make significant progress even while facing substantial budget constraints due to the COVID-19 pandemic and resulting budget gaps.

The CSG Justice Center believes these locally informed, state-level recommendations will enhance Pennsylvania communities' ability to address the high number of people with SMI cycling through their local criminal justice systems. Additionally, solutions to reduce the number of people with mental illnesses in jails dovetail with the public health emergency response solutions developed to confront the spread of COVID-19 in prisons and jails. In fact, county leaders in Pennsylvania noted that local strategies they had in place through their Stepping Up initiatives allowed them to respond more swiftly and collaboratively to the COVID-19 health crisis.



# Recommendations by Priority Area

Each priority area is presented below with a description of related research, the status of implementation and enforcement of the researched policies in Pennsylvania to the extent known, and specific recommendations with corresponding action items for the state to pursue to address critical gaps and challenges.

## Priority Area 1

# Improving local capacity to collect data and share information

This set of recommendations focuses on helping states and localities collect, use, and share data to inform decision-making and track progress toward improving outcomes for people with mental illnesses who are in—or at risk of encountering—local criminal justice systems. This population needs multiple systems to coordinate in order to achieve better public safety and public health outcomes. Effective strategies for collecting, analyzing, and sharing data within and across systems are essential for such coordination. Data allow states and localities to examine the impact of investments and target resources toward the most successful strategies.

Our scan revealed several key barriers to data collection and information sharing in Pennsylvania. While some counties have sophisticated data systems that are referenced as national models, others collect data in handwritten records and have limited access to broadband internet services that support sophisticated databases. In addition, state and federal privacy laws are not in alignment—state policies are more stringent than federal policies—causing confusion at the local level about what information sharing is allowable.

To facilitate data collection, analysis, and information sharing, we recommend a combined approach that focuses on improving strategies to identify the target population; enhancing personnel and technology capacity to collect and analyze specific metrics and share information across systems; and facilitating information sharing across agencies.



## **Recommendation 1: Adopt and implement common definitions across counties to identify the target population and improve connections to care.**

**Pennsylvania does not have standardized definitions of SMI or homelessness that are used across all behavioral health and criminal justice agencies.** Without standardized definitions used across these entities, it is impossible to establish a baseline of how many people with SMI are in jails, leaving both the commonwealth and counties unable to track progress against shared goals and target resources toward specific strategies most likely to reduce the population. Further, inconsistent definitions impact the extent to which people are successfully connected to appropriate care, leading to lack of continuity of care and inconsistent services as people transition between public systems, such as corrections, hospitals, and homelessness systems.

Although the state-level “mental illness” definitions all reference the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), the definition is not precisely the same between the Mental Health Procedures Act, OMHSAS, and DOC.<sup>5</sup> OHMSAS recently aligned its definition with that in the updated DSM-5, and stakeholders shared that OHMSAS consulted with the DOC on the definition.

5. 55 Pa. Code § 5100.2.; OMHSAS-19-03, Serious Mental Illness: Adult Priority Group Bulletin (Pennsylvania Department of Human Services 2019), [www.paproviders.org/wp-content/uploads/2019/08/Adult-SMI-Priority-Bulletin-Final-8.6.19.pdf](http://www.paproviders.org/wp-content/uploads/2019/08/Adult-SMI-Priority-Bulletin-Final-8.6.19.pdf); 13.8.1, Access to Mental Health Care Policy Statement (Pennsylvania Department of Corrections 2018), [www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/13.08.01%20Access%20to%20Mental%20Health%20Care.pdf](http://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/13.08.01%20Access%20to%20Mental%20Health%20Care.pdf).

While state agencies feel they have the discretion to programmatically ensure that people do not slip between the cracks of competing definitions, this does not hold at the local level. County agencies look to corresponding state or federal agency definitions and try to adhere to those, not feeling they have the leeway to interpret definitions that functionally exist between collaborative state agencies. Local agencies do not believe they have the discretion to align competing definitions, no matter how close the definitions might be, and this results in gaps for people diverted from or leaving jails.

When county agencies do not adhere to specific state definitions, definitions may vary from county to county and from agency to agency.<sup>6</sup> Further, other county criminal justice agencies such as courts may have their own definitions—which may expand a state definition or narrow a specific population—and third-party county jail medical providers may use their own, separate definitions.<sup>7</sup> Aligned state definitions—or even guidance—for counties would illustrate the true scope of need for community-based services and would make planning, budgeting, and meeting reduction targets that much easier.

For homelessness, stakeholders reported that state agencies rely on competing federal definitions of homelessness that guide federal funding for housing, potentially leaving gaps in services for people with SMI who frequently cycle in and out of county jails. For example, assessments of the need for housing units or permanent supportive housing have looked at the number of people who meet the federal definition of “chronically homeless,” but this excludes people with SMI in jails who may stay over 90 days during the course of a year yet still experience extended bouts of homelessness.<sup>8</sup>

To unify responses to SMI, states such as Ohio and California have developed common definitions. The Ohio Department of Mental Health and Addiction Services developed a shared statewide definition of SMI based on state regulations with input from the state Stepping Up group. The County Behavioral Health Directors of California and California State Sheriffs’ Association formed a working group with other partners to develop a model definition of SMI based on state regulations that could be shared across agencies. Likewise, to address homelessness, Florida defines “homeless” in statute to guide the state’s housing strategy.<sup>9</sup> The definition includes individuals released from jails and prisons without identified residences as well as lacking resources to obtain housing. The District of Columbia defines “homelessness” in statute for consistent guidance across District agencies.<sup>10</sup>

By developing standard definitions at the state level, states can ensure that people who may cycle in and out of jails can remain eligible for state programs as they enter or exit the criminal justice system. Unified state-level definitions can align a state’s entire response to SMI and homelessness and guide counties as they follow suit.

6. 37 Pa. Code § 95.232, 95.243. For example, per regulation each county jail must maintain a written policy on “mental illness” although “mental illness” is not defined nor is “serious mental illness” mentioned.

7. “Montgomery County Behavioral Health Court, *Policy and Procedure Manual* (Montgomery County, PA: 2009), [www.montcopa.org/DocumentCenter/View/696/Montgomery\\_County\\_Behavioral\\_Health\\_Court\\_Policy\\_and\\_Procedural\\_Manual?bidId=](http://www.montcopa.org/DocumentCenter/View/696/Montgomery_County_Behavioral_Health_Court_Policy_and_Procedural_Manual?bidId=). See the Montgomery County Behavioral Health Court definition of serious mental illness, an eligibility criteria for participation in the behavioral health court: “In order to participate in Behavioral Health Court the person must have a serious mental illness (SMI) diagnosis (schizophrenia, major mood disorder, psychoses NOS, borderline personality disorder).”

8. 24 CFR Parts 91 and 578 RIN 2506-AC37, [hudexchange.info/resource/4847/hearth-defining-chronically-homeless-final-rule/](http://hudexchange.info/resource/4847/hearth-defining-chronically-homeless-final-rule/). In 2015, the U.S. Department and Housing and Urban Development’s (HUD) issued a “final rule” establishing the definition of chronic homelessness. 42 U.S.C. § 119(4)(B) (2015), <https://uscdo.house.gov/view.xhtml?path=/prelim@title42/chapter119/subchapter6/partB&edition=prelim>; 34 U.S.C. Subtitle I, § 111(3), <https://www.acf.hhs.gov/fysb/law-regulation/runaway-and-homeless-youth-program-authorizing-legislation>; “SI 00835.060 Transients, Homeless Individuals, and LA/ISM Determinations” U.S. Social Security Administration, 2005, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835060>. There are other definitions of “homelessness” between HUD, the Department of Education, Health and Human Services, and the Social Security Administration that determine eligibility for specific federally supported programs administered by these agencies.

9. Fla. Stat. § 420.621(5).

10. D.C. Code § 4-751.01(18).

**Action Item 1.1: Reconcile differences among existing definitions of SMI across state agencies, which could include amending those definitions or adopting another definition (e.g., OMHSAS’s recently updated definition).**

**Action Item 1.2: Potentially through a formalized interagency workgroup, develop a shared definition of homelessness for state agencies to use.** Provide TA to counties to ensure that people diverted from or leaving jails are not excluded from state-funded programs based on federal definitions of homelessness.

**Action Item 1.3: Issue statewide guidance to counties on adopting the mental health and homelessness definitions and provide guidance to support adoption at the local level.** This could involve a directive that the definition be adopted at the county-wide level across all agencies (or at the very least, by county jails, as county Mental Health/Intellectual Disability agencies are already adopting). Allow counties to add pieces important to them locally (e.g., traumatic brain injuries and autism spectrum disorders) while screening and collecting data based on the state definition. Convene a working group composed of local criminal justice and behavioral health stakeholders (i.e., Pennsylvania Sheriffs Association, County Commissioners Association of Pennsylvania, and others) with the goal of voluntarily aligning local definitions across the commonwealth with state definitions while identifying ways to reconcile any competing definitions or incorporate local needs.



## **Recommendation 2: Implement universal mental health, substance use, and homelessness screenings with timely follow-up clinical assessment, as needed, at booking.**

Universal screening for homelessness, mental illnesses, and SUDs helps (1) establish a clear and accurate measure of prevalence; (2) establish a common metric against which to track across county jails; (3) ensure connections to appropriate services; and (4) provide data to inform the scale of needed services. While county jail minimum standards are enforced by the DOC, **Pennsylvania does not have state-level policies that require or directly support universal screening for mental health or homelessness in county jails, and tools are dependent on the preferences of individual systems.** This results in a lack of uniformity across the state and means that a true picture of any target population, such as people with SMI, is incomparable across counties.

The DOC’s Office of County Inspections and Services maintains minimum standards for county jails that are defined in statute; stakeholders reported that only items specifically defined in statute are able to be enforced.<sup>11</sup> The standards require that admissions background must include a medical history, inclusive of substance use, and the “treatment intake screening” must include mental illness.<sup>12</sup> County jails must also have policies in place to determine if someone is “mentally ill” under the Mental Health Procedures Act (rather than the DOC definition).<sup>13</sup> These policies, stakeholders reported, can vary from one county jail to another.

A lack of screening for homelessness with connections to services for people who are leaving county jails creates gaps between public systems. Screening for homelessness in jails is not currently supported through state funding and occurs patchily—if it even happens—from county to county. During homelessness screening, county jails ask for “previous address” but not about whether the person is experiencing homelessness or has a risk of it. The minimum standards reference required referrals or connections to “social services” but do not specify homelessness.

11. 37 Pa. Code § 95.243; 50 P. S. § 7101—7503, <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1976/0/0143..PDF>. The Mental Health Procedures Act mentions people who are incarcerated, although specifically in the context of competency restoration. In addition to screening assessments, a person may voluntarily ask for a screening and treatment for mental illness under Title 55 Code § 5100.92, which outlines how people may apply for voluntary examination when incarcerated. See 55 Pa. Code § 5100.92. Voluntary examination and treatment of a person charged with a crime or serving a sentence,” <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/055/chapter5100/s5100.92.html&d=reduce>.

12. 37 Pa. Code § 95.243

13. Ibid.



Stakeholders shared that the DOC has access to limited homelessness data from county jails, but the data is not standardized or collected by every county jail.

County jails should screen every person at booking (i.e., universal screening) for mental illness, substance use, and homelessness. These screenings can be coordinated with other intake processes completed at that time (e.g., collecting demographic and emergency contact information, determining housing assignments, and conducting other screenings). Many communities across the country have adopted validated, non-proprietary screening tools—like the Brief Jail Mental Health Screen or the Correctional Mental Health Screens for Men and Women.<sup>14</sup> For health assessments, following up on positive screenings with a clinical assessment by a licensed mental health professional within 72 hours (or as soon as possible) is a best practice. When this is not feasible within a county jail setting, a process is needed to refer people to a community provider who can conduct a clinical assessment once the person is released.

Screenings for non-clinical issues, such as homelessness, should be simple and mandatory, taking place as part of larger entry or medical screenings, and should conform to common definitions, such as a statewide definition of homelessness. Screenings should also link people to existing community-based services, such as the homelessness service system. Alternatively, county jails can alert the homelessness service system through the sharing of jail rosters, so that the system can provide linkages or in-reach.

A number of states require behavioral health screening in jails. In California, while regulations require jails and jail-based behavioral health services to screen individuals who are booked into the facility for various mental health issues, stakeholders in the state would prefer more specificity in the regulations or guidance in screening for mental health.<sup>15</sup> As part of legislation focused on jail-based behavioral health services, Colorado requires jails and providers to conduct behavioral health screenings upon booking.<sup>16</sup> Texas requires jail administrators to improve screening for mental illness and divert people from jail to treatment.<sup>17</sup> The state has a mandatory screening tool, although the status of implementation is unclear, as local communities report that the state did not include dedicated support for implementation.

Uniform screening in Pennsylvania county jails would connect people with SMI to necessary community-based services. This would reduce the chances that someone would slip between the cracks of public systems, putting them at a higher risk of returning to homelessness and exacerbating health conditions, including elevating the chances of exposure to COVID-19 and subsequent severe illness.

**Action Item 2.1: Issue best practices for implementing universal screening with follow-up clinical assessment—where appropriate—to identify people with SMI, SUDs, and experiencing homelessness when they are admitted to county jails.** Identify and share examples of brief screening questions or tools used successfully in the state or in other states conducting these screenings. Develop and promote guidance on how screenings can inform the reentry planning process for referrals or coordination with in-reach services. Encourage county jails to connect to Continuums of Care for referrals and in-depth needs assessments, with county jail screenings acting as a tool to triage and connect people with community resources for in-depth assessments. Provide examples as well as template policies and procedures for allowing in-reach services in jails.

**Action Item 2.2: Assess the extent to which local systems have or are able to adopt best practices related to universal screening and follow-up assessment.** Issue a survey, potentially administered by a new or existing task force or subcommittee or existing advisory group, like MHJAC, or through another agency, like PCCD.

14. Substance Abuse and Mental Health Services Administration, “Screening and Assessment of Co-Occurring Disorders in the Justice System” (Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2019), [store.samhsa.gov/sites/default/files/d7/priv/pep19-screen-codjs.pdf](https://store.samhsa.gov/sites/default/files/d7/priv/pep19-screen-codjs.pdf)

15. Cal. Code Regs. tit. 15, § 1209 (2019), <https://www.bscc.ca.gov/wp-content/uploads/Adult-Title-15-Effective-1.1.2019.pdf>.

16. Colo. Rev. Stat. § 27-60-106.

17. “Texas Commission on Jail Standards Mental Health Study,” State of Texas Commission on Jail Standards, 2019, <https://www.tcjs.state.tx.us/wp-content/uploads/2019/09/MH-Study.pdf>.

**Action Item 2.3: Explore options to accelerate statewide adoption of best practices, including modifications to existing standards for county jails, encouraging new partnerships across systems, and developing recommended standards.** The current minimum standards enforced by DOC could be enhanced to expand the “basic personal information” that is collected during admission.<sup>18</sup> However, this would require legislative or regulatory change and subsequent time to write or rewrite regulations. All would require additional support for implementation and statewide adoption.

**Action Item 2.4: Provide ongoing support and technical assistance through various mechanisms (e.g., the PCCD-supported Stepping Up Technical Assistance Center) to support local implementation, and publicly recognize the county jails that meet specific best practices or standards.**

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### **Recommendation 3: Create a statewide database or data warehouse that local agencies can access with appropriate privacy protections to enable the collection, analysis, and use of data and allow for continuity of care as a person moves between systems and across counties.**

The pandemic has revealed that, all too often, there are large gaps between public data systems, and local governments struggle to pull together their own data without larger, unifying efforts. Localities often need help addressing some of the common challenges to collecting, analyzing, and reporting accurate data, which is essential for effective policymaking and acutely so for smaller or rural counties due to limited resources spread over sparsely populated areas. **Pennsylvania does not currently have a cross-system database or data warehouse—with robust, standardized data collection—to analyze data related to SMI for people diverted from or leaving jails.**

The state does have an existing database for county jails—although the data collected is limited, voluntary, and not adopted by every county jail—and the state is developing a new cross-system database through the Pennsylvania Department of Human Services (DHS). Guidance on data warehouse standards are already established and maintained by DHS.<sup>19</sup> In addition, IT at the state level in Pennsylvania is consolidated under the Office of Administration with six focus area delivery centers.<sup>20</sup> The Public Safety Delivery Center provides IT services for criminal justice systems at the state level. Data is collected through the Pennsylvania Justice Network (JNET) by the DOC for Pennsylvania’s county jail database, “Electronic Reporting.”<sup>21</sup> Stakeholders noted that county jails are not regularly using this system, however—except for county jail overcrowding statistics—because they do not feel the system fits their needs. Probation departments currently use “Electronic Reporting 2” through JNET to regularly report statistics.

For health, Pennsylvania has the PA Patient & Provider Network (P3N) under DHS to run the state’s Health Information Exchange.<sup>22</sup> P3N is intended to allow medical records to be accessible to all providers participating in P3N.<sup>23</sup> However, stakeholders do not believe that many county jail health providers are exchanging information with community-based providers through P3N. Stakeholders further shared that a pilot was planned to connect county jails to P3N, but this work was halted due to the pandemic. Ensuring that county government agencies and county jails adopt DHS’s (or related) databases and securing their buy-in is crucial to reduce redundancy and fragmentation in data on people diverted from or leaving jails.

18. 37 Pa Code § 95.222, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/037/chapter95/chap95toc.html&d=reduce>.

19. STD-EKMS001, Data Warehouse Standards (Commonwealth of Pennsylvania Department of Human Services 2018), <https://www.dhs.pa.gov/providers/Providers/Documents/Business%20and%20Tech%20Standards/KnowledgeManagement/Data%20Warehouse%20Development%20Standard.pdf>.

20. “HR and IT Shared Services Transformation,” Pennsylvania Office of Administration, accessed October 2020, <https://www.oa.pa.gov/sharedservices/Pages/default.aspx>.

21. “Information Available on JNET,” Pennsylvania Justice Network (JNET), accessed October 2020, <https://www.pajnet.pa.gov/WHAT%20WE%20DO/Pages/Information-Available-on-JNET.aspx>.

22. Formerly the Pennsylvania eHealth Partnership Authority.

23. HB 1062, 2015-2016 Legislative Session, Reg. Sess. (Penn. 2016), <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=76>.

At this time, a state-developed, multi-sector data system as described above has not been identified in the U.S. However, states are working toward this ideal. The Arkansas Department of Human Services is working with county officials and community-based providers to identify data to collect from newly created crisis stabilization units, enabling state and county leaders to analyze the effectiveness—and even potential cost savings—of diverting people from county jail and hospital emergency departments.<sup>24</sup> The Ohio Housing Finance Agency runs the Ohio Human Services Data Warehouse, collecting local data to analyze and track it for local organizations as well as inform resource allocation at both the state and local levels.<sup>25</sup> A steering committee oversees data brought into the Data Warehouse and retains approval over the types of analyses and reports that are created. On a regional level, the Northwest Ohio Regional Information System is a database that stretches across state lines to include local jurisdictions from Ohio and Michigan.<sup>26</sup> The database serves local law enforcement, courts, corrections, federal law enforcement, two state agencies, and numerous county systems. Nevada operates a statewide Homeless Management Information System (HMIS) for use by the state’s local Continuums of Care to track outcomes across the state, pool resources between the state and local communities, and to qualify for additional federal funding.<sup>27</sup> Data is then used to develop state priorities to address homelessness. California is developing a similar statewide HMIS for use by local Continuums of Care.<sup>28</sup>

By developing a centralized data repository for collection and analysis, Pennsylvania can conduct cross-system data analyses. Data warehouses allow for all relevant information to be stored in one place with different access levels for each agency. This makes it easier to collect information across agencies and to share which cases are “flagged” for connections to care, such as collaborative case management approaches between pretrial services and behavioral health agencies. Ensuring that county government agencies and county jails adopt this (or related) databases and gaining their buy-in is critical to avoid further fragmentation and duplication of data and reporting systems.

**Action Item 3.1: Develop a state database or data warehouse, along with adequate support and training, with appropriate privacy protections for county jails and their partner organizations to collect and share data across systems.** If the state-level, cross-system database or warehouse is not feasible in the short term, explore expanding the use of DOC’s Electronic Reporting system, or a similar system, for county jails. Develop case examples and provide technical assistance and guidance to county jails and their partners on how jails can share data from the Electronic Reporting system, including sharing with county-level cross-system databases. Standardize metrics (see Recommendation 5) within the database to allow transfers between counties and for administrative data comparisons across counties. Provide trainings, or train-the-trainer sessions, on privacy practices and data sharing for counties (see Recommendation 8). Provide guidance to counties on the types of organizations that would benefit from adopting the database. Ensure that counties with existing databases (Allegheny, Berks, Lancaster, etc.) are consulted throughout the process to gain their buy-in. Consider whether the new state database can share data along common metrics with existing robust county databases to allow comparisons of metrics and ensure continuity of care with counties maintaining their existing county databases.

**Action Item 3.2: Leverage state-level capacity to assess and analyze existing local data by identifying an entity with technical expertise and staff capacity to appropriately plan and scale local interventions.** To build local capacity, if not available at the state level, provide guidance on how counties can partner with local colleges to support data analysis and sharing. Identify a state agency with technical and staffing capability to match and analyze state and/or local data to quantify the need for mental health, crisis services, and housing services for people

24. “Arkansas’s Justice Reinvestment Approach: Enhancing Local Mental Health Services for People in the Criminal Justice System,” CSG Justice Center, accessed October 2020, <http://csgjc.wpengine.com/publications/arkansas-justice-reinvestment-approach-enhancing-local-mental-health-services-for-people-in-the-criminal-justice-system/>. The crisis stabilization units were established through Justice Reinvestment legislation.

25. “Welcome to the Ohio Human Services Data Warehouse,” Ohio Human Services Data Warehouse, accessed October 2020, <http://ohiodatawarehouse.org/>.

26. “About,” Northwest Ohio Regional Information System (NORIS), accessed October 2020, <https://www.noris.org/About>.

27. “About Nevada Statewide CMIS/HMIS,” Clarity Nevada Statewide CMIS, accessed October 2020, <http://nvcmis.bitfocus.com/about/about-nevada-statewide-cmis/>.

28. California Homeless Coordinating and Finance Council, “Exploring Development of a California Homeless Data Integration System,” (Sacramento: California Homeless Coordinating and Finance Council, 2019), [https://www.bcsh.ca.gov/hcfc/meetings/materials/20190117\\_chdis.pdf](https://www.bcsh.ca.gov/hcfc/meetings/materials/20190117_chdis.pdf).

with SMI who are diverted from or leaving county jails. Develop and publish to the state agency website formal procedures guiding local organizations on how to access the services of the data warehouse. Develop clear lines of communication with local partners on the collection and use of data and on how aggregated data and reports will be disseminated. Use existing in-state expertise, such as Actionable Intelligence for Social Policy at the University of Pennsylvania and their experience in sharing administrative data between systems, to help counties conduct assessments or share with the state.

**Action Item 3.3: Encourage collaboration between local Stepping Up stakeholders, continuums of care, and other partners to assess the needs in their communities.** Provide guidance on how counties can partner with local colleges to analyze data.

**Action Item 3.4: Provide trainings, or train-the-trainer sessions, for counties on data collection and information sharing** (see Recommendation 8).



## **Recommendation 4: Develop an online clearinghouse with guidance and resources to help local jurisdictions collect, analyze, and share data across agencies.**

While a unified statewide database would facilitate information sharing, local governments and organizations still need guidance addressing some of the common challenges to data collection, analysis, and reporting across systems. Local-level stakeholders noted that **local organizations have developed fragmented methods of sharing between local agencies, absent state-level guidance in Pennsylvania, resulting in an inability to share much information between counties.** However, actions to rapidly address the pandemic have shown that there is more of an appetite to share data across organizations at every level of government. If a state-level data system is not developed, the state should try to mitigate the amount of fragmentation between counties as they collect and share data, potentially with different partners and technical capabilities.

Clear guidance, housed in one easy-to-navigate website, can serve as a clearinghouse giving local jurisdictions a strong starting point. Rather than having counties dedicate staff time to researching how to collect, analyze, or share data, states can help facilitate these actions and save counties time and money. States can detail examples of the cross-sector agreements, such as memoranda of understanding (MOUs) and data use agreements (DUAs), which often describe the justification for sharing data, the data fields that are collected/shared, how the data is transferred between organizations, the responsibilities of handling the data, and how long the agreement lasts.<sup>29</sup> Often more involved than MOUs and DUAs, business associate agreements describe services to be provided rather than simply outlining partnerships or data sharing. States can provide these templates and draw from existing examples within the state to make the templates relevant and more accessible to local stakeholders.

29. "Key Elements of Data Sharing Agreements," National Neighborhood Indicators Partnership, accessed October 2020, <https://www.neighborhoodindicators.org/library/guides/key-elements-data-sharing-agreements>. National Neighborhood Indicators Partnership developed a guide on 12 critical elements of data use agreements: purpose and intended use of data sharing; period of agreement; description of data; timing and frequency of updates; custodial responsibility and data stewardship; roles and responsibilities; permissible data use, linking and sharing under this agreement; resources and costs of data sharing and data management; no warranty for data or linkage quality; indemnification; publication and dissemination of results; and termination and modification of this agreement.



Examples of cross-system sharing notably include data warehouses in Allegheny, Berks, and Lancaster Counties. All involve different local partners and took decades to develop with significant collaboration and resources across systems. However, these systems can rarely share information from county to county.<sup>30</sup> The partners include the county government, jail, public housing authority, community corrections, behavioral health, child welfare, public schools, aging, courts, workforce development, and others. Organizations in Lancaster County developed Empower Lancaster for care coordination, a database that accommodates universal intakes and assessments usable by each organization in the system.<sup>31</sup> The database encompasses 50 organizations, including the local Continuum of Care, hospitals, and United Way, although notably does not include data from the county government.

Local stakeholders we interviewed indicated that even if they are not able to replicate these exact models in their communities, the ability to learn from these counties' experiences and not reinvent the wheel as they seek ways to facilitate cross-system data collection and information sharing is valuable. The state can play a vital role by providing guidance and lifting up examples and model resources for other counties' benefit and promoting connections among peers.

**Action Item 4.1: Identify counties that are already collecting and sharing data across systems and elevate these models to support replication elsewhere in the state.** Create a learning collaborative to mentor counties without databases. Create case studies on each county with a cross-system database. Host information about each identified model on a state agency website (e.g., Office of Administration), including the agreements, policies, and procedures used to operate them.

**Action Item 4.2: Develop a roadmap for local jurisdictions to replicate other jurisdictions' ongoing efforts to collect, analyze, and share data.** Provide guidance on how individual county databases should allow information to pass from county to county to ensure continuity of care. Develop a checklist of partners to include in data sharing.

**Action Item 4.3: Provide sample resources, such as standardized MOUs and DUAs, to help agencies share data and collaborate across systems as well as to navigate state and federal regulations** (see Recommendation 9). Provide a checklist of necessary expertise for partners and consultants, such as county-specific legal research, data warehouse design and operation, and program coordination.

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## **Recommendation 5: Whenever possible, specify that state and local agencies collect and report on particular metrics (e.g., Stepping Up four key measures).**

Providing specified metrics and a suggested protocol for tracking these metrics at the local level ensures consistency and accuracy in data collection. It also provides direction for setting baseline metrics at the local level to inform local policy, as well as higher-level aggregate data to inform state-level policies, determine capacity needs, and track progress across the state.

**While there are required minimum standards for county jails in Pennsylvania, there are not required, standardized metrics that must be collected to meet specified outcomes.** Stakeholders noted that this leads to inconsistent metrics and data collection from county to county, limiting comparisons among counties and the usefulness of the data that is collected. Under the DOC regulation that governs county jail minimum standards, county jails are required to report only broad "population information" and "extraordinary events" monthly to the DOC.<sup>32</sup> As a result, data collected by state agencies from county jails on SMI and homelessness is minimal or nonexistent. County Criminal

30. "Allegheny County Analytics," Allegheny County Department of Human Services, accessed October 2020, <https://www.alleghenycountyanalytics.us/>. Allegheny County developed its own cross-system data warehouse that merges county-level data from numerous agencies under one authority and allows for administrative and care coordination data use.

31. "Empower Lancaster," Empower Lancaster, accessed October 2020, <https://www.empowerlancaster.org/>.

32. 37 PA. Code Ch. 95; § 95.232 <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/037/chapter95/chap95toc.html&d=>.

Justice Advisory Boards (CJABs), as part of their minimum operating standards, are not required to report on standardized metrics for county criminal justice systems.<sup>33</sup> Stakeholders shared that many county jails complete their required annual reports, but that the information is not standardized and is lacking in outcome metrics for people with SMI or who are experiencing homelessness. Reports in 2016 from the County Commissioners Association of Pennsylvania's (CCAP) Behavioral Health Task Force and in 2020 from the Pennsylvania Reentry Council each cited the lack of data collection and reporting as significant barriers to state progress and noted the need to collect behavioral health and housing status, among other key metrics.<sup>34</sup> Stakeholders shared that funding standards and priority populations have been a regular funding requirement from PCCD for CJABs in the past and could be replicated through future support to encourage collecting and reporting data at the local level.

Metrics should complement, rather than try to replace, federal metrics that many programs rely on for funding and fit into existing systems. Metrics should be reported on a regular basis, making data analysis both useful and timely for performance evaluation and funding streams.

**Action Item 5.1: Provide guidance on what metrics counties should collect and analyze, including targets to reduce the number of people with SMI in jails.**

Define metrics to illustrate how a system performs (such as returns to jail or number of people diverted) and how programs impact people (such as assessing average lengths of stay) rather than simply reporting on the number of participants in a program. Categories of metrics should include institutional placements (arrests, returns to incarceration, county jail bookings, emergency department visits, inpatient behavioral health stays, state hospital stays); housing stability (days housed in permanent housing, emergency shelter use); and recovery goals.

**Action Item 5.2: Require CJABs to report certain data to PCCD, including data related to SMI, homelessness, and recidivism for county jails.** Provide guidance on metrics in PCCD contracts and in any CJAB operating and data collection guidelines. Consider updating the PCCD dashboard to allow CJABs to view their own data and compare with other counties.

**Action Item 5.3: Ensure that reporting requirements can be completed using as few IT systems as possible to create seamless transfers of information, avoid gaps between systems, and alleviate reporting burnout.**

## Stepping Up Initiative's Four Key Measures

Specific metrics could include the four key measures identified by the Stepping Up initiative as part of the Stepping Up Framework to reduce the number of people with SMI in jails: (1) number of people with mental illnesses booked into jail, (2) their average length of stay, (3) number of people connected to treatment, (4) their recidivism rates. These four measures help communities establish baseline data and track their progress against each measure, as well as identify gaps and opportunities to improve policy and programming.

Stepping Up Initiative, "Four Key Measures Case Studies," (Washington, DC: National Association of Counties, CSG Justice Center, and the American Psychiatric Association Foundation, 2018), [https://stepuptogether.org/wp-content/uploads/Four-Key-Measures\\_FULL-report\\_FINAL.pdf](https://stepuptogether.org/wp-content/uploads/Four-Key-Measures_FULL-report_FINAL.pdf).

33. "County Criminal Justice Advisory Boards Minimum Operating Standards," Pennsylvania Commission on Crime and Delinquency, accessed October 2020, [https://www.pccd.pa.gov/criminaljustice/advisory\\_boards/Documents/CJAB%20Minimum%20Operating%20Standards.pdf](https://www.pccd.pa.gov/criminaljustice/advisory_boards/Documents/CJAB%20Minimum%20Operating%20Standards.pdf). For current CJAB minimum operating standards.

34. Comprehensive Behavioral Health Task Force, *Report of Findings And Recommendations: A Guide for Counties Seeking Alternatives to Incarcerating Mentally Ill and Substance Abusing Offenders* (Harrisburg: County Commissioners Association of Pennsylvania Comprehensive Behavioral Health Task Force, 2016), <https://www.pacounties.org/GR/Documents/Comprehensive%20Behavioral%20Health%20Task%20Force%20Reform%20Report%20-%20FINAL.pdf>; Pennsylvania Reentry Council, *2020 Report of the Pennsylvania Reentry Council* (Harrisburg: Office of the Attorney General Office of Public Engagement, Pennsylvania Reentry Council, 2020), <https://www.attorneygeneral.gov/wp-content/uploads/2020/03/2020-PARC-Report.pdf>.



## **Recommendation 6: Increase staffing capacity at the local level to support planning, coordination, data collection, and analysis across agencies (e.g., local coordinators, data analysts).**

The state can help ensure that localities are equipped to comply with requirements for data collection and reporting by supporting local staff capacity, such as coordinators and data scientists, as **the state does not currently fund dedicated program coordinator or data analyst roles to support data collection and analysis**. Typically, staff take on some of these duties on top of their existing roles, leading to burnout and turnover that drains institutional knowledge. Stakeholders in denser counties reported that they have some staff and capacity to collect and analyze data, while less dense counties and regions report a lack of capacity and staff. PCCD currently supports the capacity of local jurisdictions collecting accurate information, such as the creation of digital booking facilities through the Office of Criminal Justice System Improvements for local law enforcement.<sup>35</sup> PCCD supports funding for Research, Evaluation and Policy Development at the local level, although this emphasizes Child Advocacy Centers.<sup>36</sup>

State investment in project coordinators and data analysts (and/or providing flexibility in funding so that local jurisdictions can fill gaps in data collection) has shown to be effective in managing the work at the local level (e.g., Stepping Up Innovator counties) and vital for local jurisdictions to make and track progress.

**Action Item 6.1: Provide local funding, salary contribution incentives, or regional positions to help communities fund positions or provide flexibility in funding positions to facilitate planning, data collection, and analysis using specific metrics.** For smaller or rural communities, PCCD could invest in regional data analysts that could be housed as part of CCAP whose jobs would be to assist counties with data analysis.

**Action Item 6.2: Adjust the criteria for maintaining a CJAB to include either a specific coordinator position or a certain percentage (e.g., 50 percent) of one person's time dedicated to coordination or planning.** PCCD could adjust the criteria for maintaining a CJAB (which is the entity that disburses state funds to counties through PCCD) to include a specific coordinator position, or to ensure that 50 percent of one person's time is dedicated to coordination/planning. The same could be done for a data analyst. If counties meet and maintain certain criteria (such as a reduced percentage of people with SMI in the county jail, using specific evidence-based practices, etc.) they could be eligible for additional funding from PCCD to support 50 percent of a data analyst's and/or coordinator's salary for two years.

35. "Booking with Technology," Pennsylvania Commission on Crime and Delinquency, accessed October 2020, [https://www.pccd.pa.gov/criminaljustice/advisory\\_boards/Pages/PCCD-Enhancing-Law-Enforcement-.aspx](https://www.pccd.pa.gov/criminaljustice/advisory_boards/Pages/PCCD-Enhancing-Law-Enforcement-.aspx).

36. "Funding Streams," Pennsylvania Commission on Crime and Delinquency, accessed October 2020, <https://www.pccd.pa.gov/Funding/Pages/Funding-Streams-Etc.aspx>.

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## Recommendation 7: Align state information sharing and privacy laws for substance use and mental health with federal guidelines for HIPAA and 42 CFR Part 2.

Due to the separate provision of services for substance use and mental illness, it is important that access to both are fully functioning, which is facilitated through comprehensive information sharing. How well information sharing occurs about people with substance use disorders has implications for how the co-occurring population is identified and accesses services. **Pennsylvania has a number of different, non-centralized policies that place additional restrictions on what information can be disclosed related to substance use treatment in particular.<sup>37</sup> Pennsylvania laws for both substance use and mental health treatment information are outdated and more restrictive than federal provisions.**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) governs disclosures and patient access to information for health entities.<sup>38</sup> The U.S. Department of Health and Human Services has clarified that states may provide additional protections, but not fewer protections than are included in HIPAA.<sup>39</sup> Protections under 42 CFR Part 2 are intended to protect the privacy of people with substance use disorders.<sup>40</sup> 42 CFR Part 2 is generally stricter than HIPAA, with additional protections and fewer disclosures of information allowed. The federal government has recognized the challenges that restrictions through HIPAA posed to the delivery of services and provided flexibility for providers.<sup>41</sup> In response to the national pandemic, new federal provisions related to 42 CFR Part 2 expanded the ability of certain providers to share information, while also tightening restrictions in the event of a breach and expanding other patient protections. This guidance represents changes that the field has long sought but of ten did not think would occur. Within their own statutes, states should emphasize the importance of protecting personally identifiable information while ensuring that care collaboration between systems can occur and that administrative data can be used to check system performance to improve outcomes.

Pennsylvania stakeholders reported confusion in interpreting the various state statutes and regulations, limiting coordination across medical and behavioral health providers; access to payment, as information may be not disclosed appropriately to insurance plans; and collaboration across health/behavioral health, criminal justice, housing, and other systems. For SUDs, legal research suggests that Pennsylvania's statute goes beyond HIPAA and 42 CFR Part 2, as it "does not allow a patient to consent to the disclosure of their information for purposes such as research, quality improvement, and public health."<sup>42</sup> Under this statute, SUD information may only be disclosed with consent and only

37. See 71 P.S. § 1690.108; 4 Pa. Code § 255.5; 28 Pa. Code § 709.28; 55 Pa. Code § 5100.31 et seq.; 28 Pa. Code § 715.11; 28 Pa. Code § 711.43, 711.53, 711.62, 711.72; 711.83, 711.93, 710.23; 55 Pa. Code § 5230.17; source: [http://www.healthinfollow.org/lb/download-document/9872/field\\_article\\_file](http://www.healthinfollow.org/lb/download-document/9872/field_article_file); See also Title 28, Chapter 563. Medical Records, <http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/028/chapter563/chap563toc.html&d=reduce>; Title 42 Judiciary and Judicial Procedure Part IV. Actions, proceedings and other matters generally Chapter 61. Rules of evidence. Subchapter E. Medical records, <http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/028/chapter115/chap115toc.html&d=reduce>; Title 28 Chapter 115. Medical Record Services, <http://pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/028/chapter115/chap115toc.html&d=reduce>; and "Privacy Of Consumer Health Information" appears to adhere closely to HIPAA and allows disclosures for case management, research purposes, and all disclosures allowed under federal law, see Title 31 CHAPTER 146b. Privacy Of Consumer Health Information, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter146b/chap146btoc.html&d=>.

38. "Health Information Privacy," U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/index.html>.

39. "Does the HIPAA Privacy Rule preempt state laws?" U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/for-professionals/faq/399/does-hipaa-preempt-state-laws/index.html>. For further clarifications, see "Fast Facts for Covered Entities," U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/for-professionals/covered-entities/fast-facts/index.html>.

40. "Substance Abuse Confidentiality Regulations," U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, accessed October 2020, <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>.

41. "HIPAA and COVID-19," U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>.

42. 71 P.S. § 1690.108, <http://www.health.state.pa.us/pdf/act63.pdf>; For their analysis of Pennsylvania law, see Lara Cartwright-Smith, Elizabeth Gray, and Jane Hyatt Thorpe, *Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges and Opportunities* (Washington, DC: The George Washington University Milken Institute School of Public Health, 2019), [http://www.healthinfollow.org/PA\\_substance\\_use\\_information\\_confidentiality](http://www.healthinfollow.org/PA_substance_use_information_confidentiality).



for “two purposes: (1) to medical personnel exclusively for diagnosis and treatment; or (2) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or dependence.” Any changes, requirements, or conditions would require legislative action to change the statute.<sup>43</sup>

Similarly, the Mental Health Procedures Act, specifically 50 P.S. §7111, includes a confidentiality provision for mental health records that is overly restrictive and has been narrowly interpreted in court cases.<sup>44</sup> In contrast, federal regulations under HIPAA contain allowances in 12 different categories for disclosures of personal health information without patient authorization, including public health, victim protection, judicial proceedings, law enforcement purposes, and serious threats to health or safety.<sup>45</sup> Reports by counties—such as one from Allegheny County—have illustrated that the Mental Health Procedures Act allows the release of information “to those actively involved in treating the individual” as well as to “the administrator,” which Allegheny’s report notes is shared jointly between DHS and county mental health agencies.<sup>46</sup> Stakeholders reported that amending the Mental Health Procedures Act is not easily done and may face great political opposition.

By examining whether state restrictions are preventing information sharing, Pennsylvania can determine whether policy changes in this area would improve outcomes and bring the state into alignment with federal protections.

**Action Item 7.1: Implement the recommendations identified in the 2019 Milken Institute report *Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges and Opportunities*.**

The recommendations in this report include taking legislative action to align state law with HIPAA and 42 CFR Part 2, revise related regulations, allow exceptions to the regulations, or share informal guidance on how regulations are applied.<sup>47</sup>

**Action Item 7.2: Amend the Mental Health Procedures Act to allow mental health treatment information sharing as permitted under HIPAA.**

## **Recommendation 8: Develop and issue guidance in plain language on what information can and can’t be shared and with whom across systems consistent with federal and state privacy protections.**

State-specific guidance that is vetted by the appropriate legal entities and other state agencies (and ideally coupled with training and technical assistance) can help address misconceptions and confusion about sharing health-related information; provide a clear sense of what information can be shared across agencies in which circumstances; and guide system-level responses, as well as individual coordination. Stakeholders reported that counties are still hesitant to share data even though general guidance on allowable sharing through state statutes, HIPAA, and 42 CFR Part 2 has been published in the past through DHS.

**Information is available through state agencies that discusses privacy protections and uses of data, but this varying guidance is not necessarily targeted toward the intersection of behavioral health, criminal justice, and homelessness; nor is it easily accessible on one easy-to-find webpage.** Governor Tom Wolf has previously issued executive orders to enable and encourage data sharing across Pennsylvania state agencies—specifically related to

43. Cartwright-Smith, Gray, and Hyatt Thorpe, *Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information*.

44. For instance, see *Zane v. Friends Hospital*, 836 A.2d 25 (2003), <https://www.courtlistener.com/opinion/2322833/zane-v-friends-hosp/>.

45. “Regulations implementing the Mental Health Procedures Act are codified under Title 55, Part 7 of the Pennsylvania Administrative Code, 5100.31 et seq. Section 5100.37, entitled “Records relating to drug and alcohol abuse or dependence,” provides that any content in a mental health record (at a covered facility) that “relates to drug or alcohol abuse or dependency” is subject to the requirements of 71 P. S. § 1690.108(c) and 4 Pa. Code § 255.5” (Cartwright-Smith, Gray, Hyatt Thorpe, 2019).

46. The Allegheny County Department of Human Services, Allegheny County Data Warehouse (Pittsburg: The Allegheny County Department of Human Services, 2018), [https://www.alleghenycountyanalytics.us/wp-content/uploads/2018/07/18-ACDHS-20-Data-Warehouse-Doc\\_v6.pdf](https://www.alleghenycountyanalytics.us/wp-content/uploads/2018/07/18-ACDHS-20-Data-Warehouse-Doc_v6.pdf).

47. Cartwright-Smith, Gray, and Hyatt Thorpe, *Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information*.

gun violence and general data sharing—through the Pennsylvania Office of Administration.<sup>48</sup> This office maintains policy guidance for Pennsylvania agencies on handling personally identifying information and builds on guidance for information privacy.<sup>49</sup> Pennsylvania state agencies have previously published public-facing HIPAA guidance, although much of this guidance has not been updated within the last five years, thus not capturing the implications of current policies. OMHSAS has issued a bulletin to facilitate the sharing of clinical information for people transferred between the Regional Forensic Psychiatric Center and state incarceration, although not for local agencies.<sup>50</sup> Stakeholders shared that to move specific projects forward, DHS’s general counsel has developed and provided specific guidance for PCCD projects to ease stakeholder concerns about sharing data. Stakeholders also shared that, in the past, DHS provided additional generic guidance on when and how data could be shared to conform with privacy practices. Still, stakeholders reported that local partners do not feel comfortable—without seeing specific guidance listed on a state website—moving forward on data projects unless these steps are repeated each time.

Guidance from the CSG Justice Center details types of criminal justice and mental health partners, whether the partners might be “covered entities,” sharing protected health information, working within federal law, and how information sharing can be structured.<sup>51</sup> The U.S. Department of Health and Human Services (HHS) published an FAQ on sharing data between criminal justice and health entities that outlines how health entities may collect criminal justice data for treatment purposes as well as when sharing does and does not require authorization and when criminal justice data might be considered protected under HIPAA.<sup>52</sup> HHS provides specific guidance on what information covered entities may share with law enforcement as well as guidance for law enforcement.<sup>53</sup>

States should develop public-facing guidance on navigating federal and specific state laws. This guidance should include the specific statutes and provide examples of how to comply with the laws for different sets of partners. Guidance should be contained in an easy-to-navigate webpage. In 2017, the California Office of Health Information Integrity, which has statutory authority to interpret and clarify state law, created the State Health Information Guidance, authoritative but non-binding plain language that clarifies state and federal laws governing the sharing of mental health and substance addiction information between behavioral health care providers and public health authorities, social service case managers and coordinators, law enforcement officers and other first responders, and caregivers. The Ohio Department of Mental Health and Addiction Services, using SAMHSA funding, published a manual that

48. Executive Order 2016-07 amending The Administrative Code of 1929 (Act 1929-175, P.L. 177, as amended), at Sections 501 and 502 (71 P.S. §§ 181, 182), see “Open Data, Data Development, and Data Governance,” <https://www.governor.pa.gov/wp-content/uploads/2016/04/2016-07.pdf>; Governor Tom Wolf issued an executive order on a public health approach to gun violence that references increasing data sharing between Pennsylvania agencies; see “Pennsylvania Governor Wolf to Sign Sweeping Executive Order to Reduce Gun Violence,” Office of Governor Tom Wolf, accessed October 2020, <https://www.governor.pa.gov/newsroom/pennsylvania-governor-wolf-to-sign-sweeping-executive-order-to-reduce-gun-violence/>.

49. ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII) (Commonwealth of Pennsylvania Office of Administration, 2010), [https://www.oa.pa.gov/Policies/Documents/itp\\_sec025.pdf](https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf); ITP-PRV001, Commonwealth of PA Electronic Information Privacy Policy (Commonwealth of Pennsylvania Office of Administration, 2006), [https://www.oa.pa.gov/Policies/Documents/itp\\_prv001.pdf](https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf).

50. SMH-P-12-04, Information Sharing Between Regional Forensic Psychiatric Centers and State or County Correctional Facilities upon Admission and Discharge (Commonwealth of Pennsylvania Office of Mental Health and Substance Abuse Services, 2012), [https://www.dhs.pa.gov/docs/Publications/Documents/FORMS%20AND%20PUBS%20MAP/d\\_005977.pdf](https://www.dhs.pa.gov/docs/Publications/Documents/FORMS%20AND%20PUBS%20MAP/d_005977.pdf).

51. John Petrila, and Hallie Fader-Towe, “Information Sharing in Criminal Justice-Mental Health Collaborations: Working with HIPAA and Other Privacy Laws,” (New York: CSG Justice Center, 2010), <https://csgjusticecenter.org/publications/information-sharing-in-criminal-justice-mental-health-collaborations/>.

52. “May a covered entity collect, use, and disclose criminal justice data under HIPAA?” U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/for-professionals/faq/2073/may-covered-entity-collect-use-disclose-criminal-data-under-hipaa.html>.

53. “When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?” U.S. Department of Health and Human Services, accessed October 2020, <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>; “Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement,” U.S. Department of Health and Human Services and U.S. Department of Justice, accessed October 2020, [https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final\\_hipaa\\_guide\\_law\\_enforcement.pdf](https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf).

walks through privacy laws and exchanges of information, offers case scenarios, and provides sample forms as well as checklists for agencies and organizations to use.<sup>54</sup> Massachusetts maintains a central database of all applicable state and federal privacy laws.<sup>55</sup> And Michigan developed a guidance tool to help navigate both HIPAA and applicable state laws.<sup>56</sup>

**Action Item 8.1: Issue an executive or legislative directive to agencies to facilitate appropriate information sharing among agencies and across systems.** Define permitted information exchanges to eliminate doubt and provide guidance on privacy protection measures and allowable exceptions.

**Action Item 8.2: Develop clear guidance and resources on what information can and cannot be shared—and with whom—for behavioral health, housing, and criminal justice partners.** Promote the guidance through webinars, stakeholder groups, and TA. Develop a tool for local governments and organizations, such as Michigan's Protected Health Information Consent Tool, to provide guidance on navigating both HIPAA and applicable state laws. As in Ohio, guidance should detail privacy laws and exchanges of information, offer case scenarios, and provide sample forms as well as checklists for agencies and organizations to use. Explore supporting the development of guidance through federal funding opportunities, as Ohio did when creating its guide.

**Action Item 8.3: Consolidate privacy guidance in a public-facing central privacy guidance webpage, either through an existing (e.g., DHS' HIPAA Privacy webpage) or new webpage.**<sup>57</sup>

**Action Item 8.4: Issue guidance and provide assistance to help counties ensure that third-party county jail vendors participate in data sharing and that their contracts allow for sharing of data not just with the contracting agency but also in cross-system collaborative efforts.** Provide technical assistance to counties on how to include data sharing directives within contracts. Provide template contracts for counties to use that clarify how the county can access the data created and stored by third-party vendors.

**Action Item 8.5: Ensure that county jails participate in the state's Health Information Exchange to allow for continuity of care between county jail health providers and health providers in the community.** Provide guidance on how county jail health providers can participate in the Health Information Exchange. Provide technical assistance to counties on how to stipulate participation in the state's Health Information Exchange within third-party medical provider contracts.

54. Christina Shaynak-Diaz, *Sharing Confidential Mental Health and Addiction Information in Ohio Mental Health and Addiction Providers And Law Enforcement* (Rootstown, OH: Ohio Criminal Justice Coordinating Center of Excellence, 2018), [https://www.neomed.edu/wp-content/uploads/CJCCOE\\_Final-Confidentiality-and-Law-Enforcement-Manual.pdf](https://www.neomed.edu/wp-content/uploads/CJCCOE_Final-Confidentiality-and-Law-Enforcement-Manual.pdf).

55. "Massachusetts law about medical privacy," Commonwealth of Massachusetts Trial Court Law Library, accessed October 2020, <https://www.mass.gov/info-details/massachusetts-law-about-medical-privacy>.

56. "Protected Health Information Consent Tool," Michigan Department of Health and Human Services, accessed October 2020, [https://www.michigan.gov/mdhhs/0,5885,7-339-71547\\_2943\\_24019\\_95037---,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71547_2943_24019_95037---,00.html).

57. "Your Privacy Rights (HIPAA)," Ohio Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/providers/Providers/Pages/Medical/HIPAA-Privacy.aspx>.



## **Recommendation 9: Issue model forms that can be used across agencies/providers to share health-related information consistent with federal and state privacy laws and protections.**

Having standard or universal forms can reduce confusion associated with each agency/provider having their own forms. Further, the ability to share information using a form that is consistent with federal and state privacy protections and has been vetted at the state level increases willingness to share information knowing it will not violate privacy protections. While **Pennsylvania has some standardized forms, their adoption is not universal across the state.** Stakeholders cited the lack of universal forms as a barrier to coordinating care that creates fragmentation even across agencies within a given county.

Providing example documents decreases duplicative efforts and allows local jurisdictions and organizations to focus on the specifics of their programs and services rather than the frameworks necessary to support them. For example, the Department of Health provides a universal authorized release form, although it is unclear if all providers statewide must accept this authorization as is the case in Ohio.<sup>58</sup> The Office of Administration is a natural place to host guidance and statewide forms, as it already maintains standardized forms for state agencies.

Consent forms and authorization forms must comply with applicable federal law. Standardized forms developed by the state do not have to be utilized by every covered entity, but all covered entities should be required to accept the state's standardized forms. In Michigan, the Department of Health and Human Services developed a standard consent form that all providers are required to use and accept.<sup>59</sup> In 2019, Ohio developed a Standard Authorization Form that applies to all covered entities in the state.<sup>60</sup> Although covered entities are not required to use the form, all of them must accept it in the state. The form contains two versions, one to comply with HIPAA and the other to comply with 42 CFR Part 2. The state Medicaid office developed guidance and instructions on how to complete and use the form.<sup>61</sup>

### **Action Item 9.1: Develop a standardized authorization or universal consent form and implementation guidance for local jurisdictions and organizations with separate versions to comply with HIPAA and 42 CFR Part 2.**

The state could, through statute, require a universal consent or authorization form for all covered entities, such as Michigan developed. The state could also develop, through statute, a universal consent or authorization form that is not required to be used by covered entities but must be accepted by all of them in the state. The state could develop guidance and instructions on how to complete and use the form that could be posted publicly on state websites along with the universal forms.

### **Action Item 9.2: Provide example cross-agency MOUs and DUAs that adhere to state standards, as well as guidance and TA to help counties tailor example MOUs and DUAs to local priorities or circumstances.<sup>62</sup>**

58. "Health Insurance Portability and Accountability Act (HIPAA)," Pennsylvania Department of Health, accessed October 2020, <https://www.health.pa.gov/topics/Administrative/Pages/HIPAA.aspx>.

59. "Michigan Behavioral Health Standard Consent Form," Michigan Department of Health and Human Services, accessed October 2020, [https://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_2941\\_58005-343686--,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_58005-343686--,00.html); enacted Pursuant to statute; HB 5136, 2013-2014 Legislature, Reg. Sess. (Mich. 2014), see <http://legislature.mi.gov/doc.aspx?2013-HB-5136>.

60. Authorized through Ohio Rev. Code § 3798.10, <http://codes.ohio.gov/orc/3798.10v1>; and defined through Ohio Rev. Code § 5160-1-32.1, <http://codes.ohio.gov/oac/5160-1-32.1>; for the standard authorization form, see "Standard Authorization Form," Ohio Department of Medicaid, accessed October 2020, <https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM10221fillx.pdf>.

61. For instructions see "Instructions for Completing ODM 10221 Standard Authorization Form," Ohio Department of Medicaid, accessed October 2020, <https://medicaid.ohio.gov/Portals/0/Providers/SAF/SAF.pdf>; for guidance, see "Ohio Department of Medicaid- Standard Authorization Form," Ohio Department of Medicaid, accessed October 2020, <https://medicaid.ohio.gov/Portals/0/Providers/SAF/SAF.pdf>.

62. An example could include Cynthia Zubritsky and Karen Fortuna, *Memorandum of Understanding Writing Guide* (Harrisburg, PA: Pennsylvania Department of Aging and Pennsylvania Office of Mental Health and Substance Abuse Services, 2010), [http://164.156.7.185/parecovery/documents/Aging-BH\\_MOU\\_Writing\\_Guide.pdf](http://164.156.7.185/parecovery/documents/Aging-BH_MOU_Writing_Guide.pdf).



## Priority Area 2:

# Increasing local diversion as early as possible from arrest and incarceration

Recommendations under priority area 2 focus on diversionary alternatives that will reduce the extent to which people experiencing mental illness are involved in local criminal justice systems. In many counties, arrest and incarceration is the primary method of stabilizing people who are in need of behavioral health treatment or other services, such as health care and housing.

To better address the needs of this population, Pennsylvania should focus primarily on supporting, expanding, and improving programs to divert people with mental illness, as early as possible in their contact with the criminal justice system (i.e., before they are arrested and booked—Intercepts 0 and 1 in the Sequential Intercept Model [SIM]<sup>63</sup>). The second priority should be enhancing, improving, and assuring the quality of diversion and treatment options for those who are charged or convicted. Programs for this population include problem-solving courts and other diversionary sentencing options. (These programs operate at the pre-charging and post-conviction stages, Intercepts 2 and 3 in the SIM, respectively.)

A consistent theme is that there is tremendous diversity across the state, in terms of demographics, resources, and the development of alternatives to incarceration. Pennsylvania has over 1,100 police departments, many of which include fewer than 10 officers. Areas not covered by local police departments are covered by the state police. This is a significant portion of the state, the north in particular. Cities such as Philadelphia and Pittsburgh have more developed alternatives to incarceration, such as collaboration between police and mental health, crisis stabilization, and diversionary programs. But in other more rural areas, organizing and developing these alternatives is more difficult. Hence, Pennsylvania's counties have varying combinations of diversion programs that operate at different points along the criminal justice continuum, from the pre-arrest phase (Intercept 0) to the post-conviction phase (Intercept 3). Counties differ significantly in terms of the availability, criteria, standards, and practices of these diversionary programs. Many areas lack the resources to administer diversion programs—they do not have the structure or organization to develop mental health collaborations, and they lack facilities for crisis stabilization or behavioral health evaluation and treatment. People with mental illnesses are arrested and jailed because they are disturbing the public, and this is too often the only option for removing them from community settings.

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## **Recommendation 10: Support, expand, and improve programs and policies to refer people experiencing symptoms of mental illness to treatment and stabilization before they are arrested and booked.**

Across the country, jurisdictions are increasingly rethinking how they can respond to people with acute mental health needs, and many—including communities in Pennsylvania—are building local crisis systems that would operate as the first line response instead of (or in close partnership with) law enforcement. The essential elements of an integrated

63. "The Sequential Intercept Model: Advancing Community-Based Solutions for Justice-Involved People with Mental and Substance Use Disorders," PRA: Policy Research Associates, accessed October 27, 2020, <https://www.prainc.com/wp-content/uploads/2017/08/SIM-Brochure-Redesign0824.pdf>.

crisis system are a local or regional crisis call center that provides 24/7 interventions via telephone, text, and chat; mobile crisis team response that will reach any person in the area; and short-term (24-hour) crisis receiving and stabilization facilities.<sup>64</sup> Pennsylvania's HealthChoices program mandates crisis hotlines and mobile crisis teams, but it is difficult to obtain the status of how these county-level mental health crisis services interact or partner with local law enforcement, and no statewide survey or report exists. There is strong interest across the state in improving community crisis service systems for people at risk of becoming involved in the criminal justice system, and law enforcement stakeholders noted the imperative that such services operate promptly and efficiently, including providing 24/7 connections to care. There is also interest in learning more from some existing crisis receiving and stabilization centers (e.g., Centre County's new crisis center and examples connected to university hospital systems in Philadelphia that have law enforcement drop-off features). Given the fragmentation and variance in local mental health call responses, the current effort by OMHSAS to develop and promulgate regulations for crisis intervention encompassing 911 call center diversion for mental health calls is particularly promising. OMHSAS and their stakeholders are examining a variety of models, including promising practices described in the Crisis Now model, such as 911 call center diversion for mental health calls that centrally deploys a non-law enforcement response (e.g., mobile crisis teams) or a mental health liaison to support law enforcement officers in the field.

Nationwide, jurisdictions have introduced police-mental health collaborations (PMHCs) as a way of approaching encounters with people who are experiencing acute mental health and co-occurring substance use needs. PMHCs can build officers' knowledge about de-escalating mental health crisis situations as well as available services and alternatives to arrest to achieve more meaningful outcomes for people experiencing mental health crises. There are many types of PMHCs, and hopefully more communities will establish a broad spectrum of models to address this growing and complex need. Some types of PMHCs include crisis intervention training (CIT) for police officers, mobile crisis teams (teams of mental health professionals skilled at stabilizing people experiencing mental health crises) available to law enforcement, and co-responder teams of officers and mental health workers who respond together to mental health crisis calls. The most common response models involve CIT teams and co-responder teams.

**While there is significant interest in and need for developing PMHCs in Pennsylvania,<sup>65</sup> assessing their status poses a challenge, with over 1,100 municipal police departments and state police patrolling many rural areas.** Municipal Police Officers Education and Training Commission (MPOETC) recently expanded the officer basic training in behavioral health and crisis response. CIT is established in many counties,<sup>66</sup> and there are strong examples in Allegheny and Centre Counties. Yet it is unclear to what extent and how often police across the state use these crisis intervention services when responding to calls, even if they are available.<sup>67</sup> Some stakeholders in Pennsylvania believe that mandating CIT for counties statewide should be explored;<sup>68</sup> others believe mandatory CIT is excessive, particularly for police departments that are small, with few and part-time staff.

A related approach to pre-arrest diversion is Law Enforcement Assisted Diversion (LEAD). These programs allow police to divert people who have committed violations that may be related to their unmet underlying behavioral health needs (as well as other social service needs, such as homelessness), including drug possession and purchasing, trespassing, criminal mischief, minor retail theft, and solicitation. Program participants are not arrested, but instead connected with social support resources, including a case manager who works with them to secure treatment and

64. Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit*, (Rockville, MD: U.S. Department of Health and Human Services, 2020), <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>.

65. Pennsylvania Mental Health and Justice Center of Excellence, *Specialized Police Response in Pennsylvania: Moving Toward Statewide Implementation* (Harrisburg, PA: Pennsylvania Mental Health and Justice Center of Excellence, 2016), <http://www.pacenterofexcellence.pitt.edu/documents/Specialized%20Police%20Response%20in%20Pennsylvania-%20Moving%20Toward%20Statewide%20Implementation%20.pdf>.

66. Ibid., 18. As of March 7, 2016, CIT programs operated in 27 Pennsylvania counties and 6 more were in development. <http://www.pacenterofexcellence.pitt.edu/documents/Specialized%20Police%20Response%20in%20Pennsylvania-%20Moving%20Toward%20Statewide%20Implementation%20.pdf>.

67. One interviewee reported that police do not like to call the mobile crisis team because they are unreliable and take a long time to respond.

68. Comprehensive Behavioral Health Task Force, *Report of Findings And Recommendations*. "The Task Force Recommends that CCAP consider developing policy positions with regard to mandated crisis intervention training for law enforcement and explore opportunities for expanded community policing models. Although most counties are not responsible for law enforcement a stronger partnership can exist."

other needs, such as housing. Various counties and localities in Pennsylvania are operating LEAD—known as Law Enforcement Treatment Intervention, or LETI—programs, and the attorney general has appointed a statewide LETI coordinator.<sup>69</sup> In some counties, programs modeled after LEAD appear to be focused specifically on substance use and do not encompass other criminal behaviors that may relate to mental illness, such as petty theft and solicitation, whereas programs in other counties do encompass these.<sup>70</sup> To maximize the benefit of these programs, they should operate in accordance with best practices, define eligibility broadly enough to reach everyone who stands to benefit from them, and follow a harm-reduction/housing first approach.<sup>71</sup>

To facilitate and encourage pre-arrest diversion, the laws governing arrest should clearly authorize officers to utilize alternatives to arrest, such as citation and commitment to treatment, in appropriate circumstances. Under Pennsylvania law, officers are permitted to arrest people for certain classes of summary offenses and for any misdemeanor committed in their presence.<sup>72</sup> However, the Rules of Criminal Procedure 519 and 441 require people who have been arrested for many misdemeanors and all summary offenses to be released on citation/summons, unless there is a threat to public safety or risk of failure to appear. Despite these opportunities for diversion, the judicial Rules of Criminal Procedure are not referenced in statutory provisions authorizing warrantless arrests, even though they require many people who are arrested on misdemeanor or summary offenses to be released on citation. Releasing people on citation in lieu of arrest is only beneficial to the target population if there are adequate alternatives for those who need stabilization or treatment. If law enforcement is using arrest as a means of removing people from the public in the absence of any stabilization and treatment alternative, then citation authority is not useful. State law allows peace officers to take a person who is “severely mentally disabled and in need of immediate treatment” to an appropriate facility for an emergency examination.<sup>73</sup> However, there is no comparable authority to transfer a person to an appropriate facility for detoxification.

➤➤ **Action Item 10.1: Police Mental Health Collaboration.** Support and enhance PMHC response models across the state. There are several steps MHJAC and PCCD can take to accomplish this: (1) develop specialized mental health training programs for a select group of officers and incentivize officers to graduate from these training programs; (2) support a police department already excelling in its use of a PMHC response model (e.g., Centre County’s CIT Program) to serve as the administrative lead for organizing PMHC response models in other jurisdictions; (3) prioritize grants to departments that invest in PMHC response models.

➤➤ **Action Item 10.2: Law enforcement diversion.** Support and broaden LETI programs across the state and encourage them to follow a standard set of best practices that align with the National LEAD Bureau’s Core Principles for Successful Implementation. These practices include adopting a harm reduction/housing first approach, rather than an exclusive focus on sobriety as a condition of remaining in the program. PCCD should collaborate with the PA LETI coordinator to identify and channel sources of funding to counties and cities as an incentive to set up LETI programs.

69. Commonwealth of Pennsylvania Office of Attorney General, “AG Shapiro Expands Collaborative PA LEAD Program in Schuylkill County to Help People Access Treatment,” news release, January 14, 2020, <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-expands-collaborative-pa-lead-program-in-schuylkill-county-to-help-people-access-treatment/>.

70. Programs mentioned in the Attorney General’s press release about PA LEAD appear to be focused on substance use. Id. Whereas programs in Philadelphia and Pittsburgh appear to include a broader range of offenses, including petty theft and solicitation. “PAD: Police-Assisted Diversion of Philadelphia,” Philadelphia Police Department, accessed October 27, 2020, <https://www.phillypolice.com/programs-services/pad/>; Rich Lord, “Hands-off, Not Handcuffs: National Program for Nonviolent Criminals May Soon be Coming to Pittsburgh,” *Pittsburgh Post-Gazette*, January 25, 2020, accessed October 27, 2020, <https://www.post-gazette.com/news/crime-courts/2020/01/25/Law-Enforcement-Assisted-Diversion-opioids-Foundation-Hope-nonviolent-criminals-pittsburgh-stories/202001160121>

71. National LEAD Support Bureau, *Essential Principles for Successful LEAD Implementation* (Seattle: LEAD National Support Bureau, 2020), [https://56ec6537-6189-4c37-a275-02c6ee23efe0.filesusr.com/ugd/6f124f\\_d458fa51ecb1462fa9d5a9f31b7442ba.pdf?index=true](https://56ec6537-6189-4c37-a275-02c6ee23efe0.filesusr.com/ugd/6f124f_d458fa51ecb1462fa9d5a9f31b7442ba.pdf?index=true).

72. Under state law, police are permitted to conduct a warrantless arrest if they observe a person committing a misdemeanor, and for certain misdemeanors not committed in their presence, as specified by several scattered statutory provisions. *Com. v. Clark*, 558 Pa. 157, 163 (1999) (discussing misdemeanor arrests). Several statutory provisions authorize arrest for certain classes of summary offenses. 42 PA C.S.A. § 8902 (permitting arrest for certain classes of summary offenses); 26 Standard Pennsylvania Practice 2d § 132:363 (discussing provisions authorizing warrantless arrest for summary offenses).

73. 50 P.S. § 7302 within the Mental Health Procedures Act.

The attorney general's LETI coordinator should publicize a local police department with a successful LEAD program to encourage other localities to follow the model and should consider promulgating guidance for LETI programs that models the LEAD Bureau's Core Principles for Successful Implementation.

**Action Item 10.3: Clarify the law of arrest and citation.** To encourage the use of diversion in appropriate circumstances, amend state law governing arrest for summary offenses (42 Pa. C. S. § 8902) to codify the rules governing arrest power for all types of offenses. Catalogue the types of offenses and conditions under which a warrantless arrest is permissible and cross-reference Rules 519 and 441, which require an officer to “promptly release from custody” a person who has been arrested without a warrant for certain misdemeanors and summary offenses, save specific exceptions. The purpose of this would be to (1) consolidate the rules governing arrest power in one place so they are easier to learn and follow; (2) formally incorporate Rules 519 and 441 into the section governing arrest power, which would require officers to promptly release people who are arrested for offenses covered by Rules 519 and 441, rather than taking them into custody; and (3) enable consistent data collection about the use of citation in lieu of arrest.

**Action Item 10.4: Clarify commitment to treatment and detox.** In amendments to the law of arrest proposed in Action Item 10.3, clarify law enforcement's authority to take custody of someone and transfer them to emergency evaluation or detoxification. For an example of such language, see Colorado R.S. 27-81-111.

**Action Item 10.5: Support statewide training in diversion.** MPOETC is charged with overseeing requirements for basic and in-service training, including interacting with people who have mental illnesses, de-escalation, and harm reduction tactics.<sup>74</sup> Part of this training should include knowledge about the diversionary alternatives in Action Items 10.1–10.4, and when it is appropriate to use them.

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## **Recommendation 11: Improve the quality of diversion and treatment options for people who are charged or convicted. Encourage mental health courts to adhere to a standard set of best practices by (1) establishing a set of accreditation criteria and (2) giving funding preference to accredited courts.**

Although diverting people with SMI prior to arrest is preferable in most instances (see Recommendation 10), there should be high-quality, evidence-based diversionary alternatives available for those who are charged or convicted. While counties across the state operate a range of pre-charging and post-conviction programs, the one that is likeliest to serve this population is problem-solving courts, primarily mental health courts.<sup>75</sup> Mental health courts exist in some but not all counties in Pennsylvania.<sup>76</sup> The criteria for participation and the point at which people enter the program differ between counties—some accept people pre-conviction, others post-conviction, or both.<sup>77</sup>

74. 53 Pa. Stat. § 2164 (as amended July 14, 2020).

75. There are other diversion programs throughout the state. The Accelerated Rehabilitative Diversion (ARD) program is a statewide program limited to people convicted for the first time, which tends to focus on driving while intoxicated. 75 P.C.S. § 3807; see also Pa.R.Crim.Pr. Rules 300, 301, 302, 310-320 (providing for ARD in summary cases punishable by less than 90 days). However, because ARD is limited to people who commit offenses for the first time, it is likely unavailable to many within the SMI population, who tend to have repeated encounters with the criminal justice system.

76. State law provides for the establishment of problem-solving courts, and (funding permitting) the appointment of a statewide problem-solving courts administrator and an advisory committee to oversee those courts (42 Pa. St. § 916). See list of mental health courts in Pennsylvania, “Pennsylvania Problem Solving Courts, January 8, 2020,” Administrative Office of Pennsylvania Courts, accessed October 27, 2020, <http://www.pacourts.us/assets/files/setting-2510/file-3585.pdf?cb=32679e>

77. For example, Lancaster County's mental health court accepts participants at either the pretrial stage (intercept 2) or the pre-sentencing stage (intercept 3). See “Mental Health Court,” Lancaster County, Pennsylvania Court of Common Pleas, accessed July 29, 2020, <https://www.court.co.lancaster.pa.us/131/Mental-Health-Court>. Luzerne County's mental health court accepts people at the pretrial stage and at the pre-revocation phase (if they are on probation). See “Luzerne County Specialty Court Screening and Referral Form,” Luzerne County, Pennsylvania, accessed July 29, 2020, <https://www.luzernecounty.org/DocumentCenter/View/4055/Mental-Health-Court-Application-PDF>. Philadelphia District Attorney operates two mental health court programs. One is a presentence diversion option for misdemeanor defendants (intercept 2). The other is a post-sentence alternative for people convicted of felonies (intercept 3). See “Diversion Unit,” City of Philadelphia Office of the District Attorney, accessed July 29, 2020, <https://www.phila.gov/districtattorney/diversion/Pages/default.aspx>.

Some courts accept cases only upon referral from the district attorney, and different district offices have their own criteria for referral. In interviews, we heard that criteria for admission to these courts can be arbitrary (i.e., whether a person cooperates with the prosecution).

**Different mental health courts in Pennsylvania have their own sets of practices, rules, and standards for conditions of supervision and sanctioning.<sup>78</sup> Courts have significant discretion in the conditions of supervision, how they oversee cases, how they respond to violations, and how long people are kept in the program.** Courts can be draconian and unforgiving in their use of incarceration as a sanction. If courts impose rules that clients are unable to follow, and if they readily use incarceration for punishment, mental health court may be more harmful than standard conviction and incarceration, as it can extend the length of time a person is under court supervision, and they might spend more time incarcerated than they would have if they served the sentence for the initial offense.

PCCD administers grant funding to problem-solving courts, including mental health courts.<sup>79</sup> The Administrative Office of Pennsylvania Courts (AOPC) oversees problem-solving courts. It has established accreditation standards for drug courts, and courts that meet those standards are given funding preference by PCCD. However, there are no accreditation standards for mental health courts. As a result, none of the courts in the state are accredited, nor does there appear to be any mechanism by which AOPC, PCCD, or any other central body oversees the practices and policies of mental health court programs.



**Action Item 11.1: AOPC should adopt a set of accreditation standards for mental health courts, like it has done for drug courts, based on best practices.<sup>80</sup>** Criteria should address the following topics, in addition to others: eligibility criteria; the terms, conditions, and requirements of participation in the program; permissible sanctions for different types of violating behavior (including constraints on when incarceration is appropriate); and the length of time a person can spend in the program.

**Action Item 11.2: PCCD should give mental health court funding preference to counties that meet the accreditation standards, as it does with drug courts.**

**Action Item 11.3: As a condition of funding, PCCD should require mental health courts to submit periodic reports to AOPC.** These reports should include data that allows AOPC to evaluate participant outcomes, the conditions imposed on participants, sanctioning practices, and racial and gender equity in treatment.

78. For example, the website for the Luzerne County mental health court states: “The requirements of each participant are individualized based on a variety of factors but general mandatory requirements include weekly meetings with Probation/Parole Officers, active participation in recommended treatment, and weekly appearance in Court.” “Mental Health Court,” Luzerne County, Pennsylvania, accessed July 29, 2020, <https://www.luzernecounty.org/568/Specialty-Court-Mental-Health-Supervision>. The website for the Lancaster County mental health court states: “A participant can expect to receive a sanction if they violate the Mental Health Court program rules or fail to achieve certain phase requirements. Typical violations that may be sanctioned include: missed appointments, failed or adulterated drug tests, new arrests / charges, dishonesty, and lack of participation in treatment. Sanctions will be imposed relative to the violation, and will be progressive in nature. Sanctions may include but are not limited to: essays, loss of privileges, phase demotion, community service, additional fines, curfew restrictions, incarceration, and termination from the Mental Health Court program. The Mental Health Court Team reserves the right to impose these and/or other sanctions appropriate to each particular participant and violation.” “Mental Health Court,” Lancaster County, Pennsylvania Court of Common Pleas, accessed July 29, 2020, <https://www.court.co.lancaster.pa.us/131/Mental-Health-Court>. There does not appear to be a public set of rules describing the conditions to which participants must adhere or specifying which sanctions are appropriate for specific behaviors or violations, etc.

79. Disconnecting Mental Illness and Substance Abuse from Crime,” Pennsylvania Commission on Crime and Delinquency, accessed July 29, 2020, [https://www.pccd.pa.gov/criminaljustice/advisory\\_boards/Pages/PCCD-Problem-Solving-Courts-and-Intermediate-Punishment.aspx](https://www.pccd.pa.gov/criminaljustice/advisory_boards/Pages/PCCD-Problem-Solving-Courts-and-Intermediate-Punishment.aspx)

80. See: The Council of State Governments Justice Center, “Mental Health Court Learning Modules,” accessed July 29, 2020, <https://csgjusticecenter.org/projects/mental-health-courts/learning/learning-modules/#:~:text=Mental%20Health%20Courts%20Learning%20Modules,learn%20about%20mental%20health%20courts> and “Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court,” accessed July 29, 2020, <https://csgjusticecenter.org/publications/improving-responses-to-people-with-mental-illnesses-the-essential-elements-of-a-mental-health-court/>. For an example of standards adopted by a state, see Georgia’s Council of Accountability Court Judges mental health court standards that are used as the basis for certification for courts across the state, “Standards for Accountability Courts: Adult Mental Health Court Standards,” accessed July 29, 2020, <https://www.gaaccountabilitycourts.org/MH.pdf>.



### Priority Area 3:

## Increasing local availability of and connections to housing

The following recommendations focus on the integral nature of housing to reduce involvement in the criminal justice system for people with SMI. Without adequate housing, people experiencing homelessness have increased encounters with law enforcement, may be held longer in pretrial detention if lack of housing is viewed as a risk, be disconnected from housing and community-based services due to incarceration—even short stays—and uneven reentry processes, and face barriers in obtaining housing due to criminal records.

Nearly all key stakeholders noted that housing was among the greatest needs and barriers to achieving criminal justice outcomes across Pennsylvania. While several policies and funding streams exist to increase the amount of and connections to housing, people with SMI who are leaving or diverted from jail are not always prioritized for this housing. The following recommendations build on Pennsylvania's progress for (1) cross-system collaboration to prioritize the housing needs of this population, (2) necessary investments in evidence-based models, including permanent supportive housing, (3) ensuring stability in the community by fully leveraging Medicaid to support pre-tenancy and tenancy services critical to stable housing, and (4) minimizing state and local barriers to accessing housing.



### **Recommendation 12: Formalize collaboration between housing, criminal justice, and mental health agencies at the state and local levels to improve housing outcomes for people with SMI in local criminal justice systems, especially those with repeated contact.**

Without formalized collaboration, actors in each system understandably focus on their direct service populations, which leads to an incomplete picture of—and inadequate responses for—people with SMI who frequently cycle between jails and homelessness. The housing and supportive services needed to achieve positive outcomes for this population require collaboration across public systems. However, these systems often have different funding streams and service delivery systems that are fragmented and siloed. **In Pennsylvania, key systems may not be adequately represented when decisions and priorities are made about how state and federal funding is administered and used, leading to critical gaps and lack of prioritization for evidence-based models.**

Collaboration between systems both (1) closes the gaps that people with SMI who experience homelessness often fall into as they move between multiple systems and (2) leverages evidence-based models to achieve criminal justice outcomes as well as reduce homelessness. Partnerships are crucial to ensuring people do not fall between the cracks of these systems—a particularly pressing concern during the pandemic, as responses understandably focus on reducing exposure to COVID-19, and thus risk for severe illness. Research and interviews revealed that Pennsylvania can take further steps to support and formalize collaboration across behavioral health, criminal justice, and homelessness systems to ensure that agencies are tackling this problem collectively, the shared population is prioritized, and

approaches are aligned with evidence-based practices across disciplines. Stakeholders shared that policy change momentum has been hard to achieve without formal state-level collaboration, leaving people with SMI who frequently cycle between jails and homelessness without a strong, purposeful voice at the table in state planning. Stakeholders from the Department of Community and Economic Development (DCED) shared that there is a gap in addressing reentry housing needs. Some agencies have taken initial steps to collaborate in considering the housing needs of people with criminal records. For instance, DCED and the DOC collaborated on the state's five-year Department of Housing and Urban Development (HUD) Consolidated Plan.<sup>81</sup> In addition, the state's informal interagency workgroup on homelessness informed the Consolidated Plan's development, although experts shared that the workgroup meets infrequently, making policy change momentum difficult to achieve.

Meaningful collaboration across agencies and systems is a pillar of addressing the needs of vulnerable populations through Governor Wolf's Vulnerable Populations Initiative, which encompasses people in county jail who have SMI and are experiencing homelessness. MHJAC is a natural vehicle to move this work forward, as Pennsylvania's Olmstead Plan—developed with the goal of “ending the unnecessary institutionalization” of people with SMI—specifically highlights this collaborative body as an important example of cross-system partnership to address the needs of people with SMI in jails.<sup>82</sup> MHJAC formerly included housing partners, but the lack of a specific housing focus in MHJAC has further stalled partnership efforts, thus hampering progress in addressing the housing needs of people with criminal records, which, in turn, prevents the state from achieving criminal justice outcomes.

At the local level to help connect people to services, Pennsylvania's Department of Human Services, in partnership with the Pennsylvania Housing Finance Agency, developed an online screening and assessment tool called PAIR for use by county-level organizations to find appropriate housing and supportive services.<sup>83</sup>

**Action Item 12.1: Formalize state-level coordination to address the needs of people with SMI who are diverted from or leaving jails and are at risk of homelessness, such as by formalizing the interagency task force and by including housing stakeholders in MHJAC.** Formalize the existing interagency task force on homelessness and include representatives from criminal justice or the MHJAC committee. Expand MHJAC's membership to include representatives from the housing/homelessness system to ensure multi-system representation and allow additional systems to contribute to solutions that reflect mutual goals (e.g., from DCED, the Pennsylvania Housing Finance Agency [PHFA], DHS, a Continuum of Care, PA Housing Alliance, or reentry housing providers). Provide guidance on the types of housing outcomes and strategies relevant to people with SMI who are diverted from or leaving county jails to guide local partnerships (e.g., California's version of MHJAC plays a similar role).

**Action Item 12.2: Encourage local partnerships—and align funding to support collaborative work—to address the housing needs of people with SMI who are diverted from or leaving jails.** Provide flexible funding for cross-system efforts that have multi-system representation (e.g., CJABs, Stepping Up, and Continuums of Care) and can demonstrate specific needs (e.g., number of people leaving jail with SMI who need housing) to address local priorities. Provide guidance or TA on strategies for successful partnerships to support efforts among Stepping Up counties to work with housing providers (e.g., Stepping Up Ohio). Survey CJABs to determine how many include a housing partner and determine how many CJABs include partners that are specifically mentioned in the minimum standards (Public Housing Authorities) and other representation from housing partners that are not specifically mentioned in the minimum standards (e.g., Continuums of Care, local Planning organizations, and reentry housing providers).

81. Pennsylvania Department of Community and Economic Development, *2019–2023 Consolidated Plan and 2019 Annual Action Plan with Amendment III* (Harrisburg, PA: Pennsylvania Department of Community and Economic Development, 2020), <https://dced.pa.gov/housing-and-development/consolidated-plan-annual-plans-reports/>.

82. See DHS's website for the state's Olmstead plans for Pennsylvania's state mental health system (last revised in 2016), as well as individual county-level plans: “Olmstead Plan for the Pennsylvania State Mental Health System,” Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/Olmstead-Plan.aspx>.

83. “Pennsylvania Creates Online Housing Tool for Counties to Help Remove Barriers to Housing Access,” Housing Alliance of Pennsylvania, accessed October 2020, <https://housingalliancepa.org/pennsylvania-creates-online-housing-tool-for-counties-to-help-remove-barriers-to-housing-access/>.

Provide guidance to county jails on joining or supporting Continuums of Care. Guidance should include the benefits of partnering through the Continuum to leverage federal funding as well as realistic expectations of Continuums' capabilities and funding.

**Action Item 12.3: Encourage agencies and organizations within a local jurisdiction to partner in tracking and improving specific housing outcomes** (see Recommendation 5).

**Action Item 12.4: Build upon existing coordination and referral services in the commonwealth to ensure that connections to available permanent supportive housing exist for people with SMI who are diverted from or leaving county jails.** Local teams already focus on providing coordinated connections to housing, including Regional Housing Coordinators and Local Housing Option Teams.<sup>84</sup> The DOC could collaborate with the Department of Human Services to provide guidelines for local jails to engage Regional Housing Coordinators and Local Housing Option Teams through partnerships or funding. PCCD could provide TA to local jails on how to develop partnerships with Regional Housing Coordinators, Local Housing Option Teams, and Continuums of Care to connect people in local prisons to these housing supports.

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## **Recommendation 13: Increase availability of and connections to permanent supportive housing for people with SMI who have repeated contact with the justice system.**

The United States faces a general lack of affordable housing, and Pennsylvania is no exception.<sup>85</sup> Stakeholders universally cited housing as a critical need, noting that a lack of housing is a regular barrier to achieving criminal justice outcomes throughout the commonwealth. COVID-19 exacerbates this challenge as states look to continue investments and must balance immediate budgetary considerations with the knowledge that investing in housing now—or planning for it—creates a larger lack of affordable housing down the road as fewer units are developed. The pandemic creates a space to reconsider what existing funding supports and align funding with evidence-based approaches and models that achieve positive outcomes.

The most effective reentry housing model for people who have had contact with the criminal justice system who also have significant behavioral health needs is permanent supportive housing. Permanent supportive housing interventions that focus on people who have frequent contact with the criminal justice, housing, and health systems have been shown to reduce arrests, number of days in jails/prisons, returns to homelessness, and Medicaid costs—yet this population often lacks access to this intervention.<sup>86</sup>

Stakeholders noted that effective housing and supportive service interventions for people frequently cycling between jail and homelessness are in short supply and have never been brought to scale in Pennsylvania, or elsewhere. Additionally, competition in setting priorities for different populations for already limited housing, particularly permanent supportive housing, means that people with SMI diverted from or leaving jails are often not prioritized, due in part to stigma associated with criminal justice involvement, political sensitivities, and the perception that one system is more responsible than another for bearing the costs. Pennsylvania's criminal justice agencies (e.g., PCCD) can

84. "Regional Housing Coordinator Program Map," Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/providers/Providers/Documents/NHT%20Providers/Regional%20Housing%20Coordinators%20Map.pdf>; "Focus on Developing Working Housing Partnerships," Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/Housing-Financing-Funding.aspx>.

85. "Pennsylvania," National Low Income Housing Coalition, accessed January 2020, <https://reports.nlihc.org/gap/2017/pa>.

86. "Funder Spotlight: Philadelphia DBHIDS," CSH, accessed February 2020, <https://www.csh.org/2018/11/funder-spotlight-philadelphia-dbhids/>; National Academies of Sciences, Engineering, and Medicine, *Permanent Supportive Housing: Evaluating the Evidence for Improving Health Outcomes Among People Experiencing Chronic Homelessness* (Washington, DC: The National Academies Press, 2018), <https://www.nap.edu/catalog/25133/permanent-supportive-housing-evaluating-the-evidence-for-improving-health-outcomes>.

collaborate with housing agencies to help direct state dollars to local evidence-based housing efforts as well as collaborate with other state agencies to ensure that the needs of this population are considered in state plans for funding.

**Pennsylvania has in place some policies to increase the amount of and connections to permanent supportive housing, although people with SMI leaving or diverted from jail are not always prioritized.** To develop housing, the Pennsylvania Reentry Council's 2020 Report notes that Pennsylvania's state funding, and plans for federal spending, include few mentions and little prioritization of this population.<sup>87</sup> The report further recommends examples of tax credits and rental assistance to expand the number of rental units and supportive housing available for people with criminal records.<sup>88</sup> Like other states, the main source of support for housing is federal funding. In terms of direct funding, the state's Consolidated Plan to spend federal housing funding designates people leaving incarceration as one of five priority populations to receive a small number of tax credits that are issued each year to develop new housing units.<sup>89</sup> In terms of tax credits, Pennsylvania's Qualified Allocation Plan to distribute federal tax credits to develop affordable housing does not include set-aside properties or scoring preference for federal Low Income Housing Tax Credit properties to increase the available housing for the population, unlike neighboring Ohio.<sup>90</sup>

Further, the state has programs to reinvest savings in housing. For example, to leverage savings through Medicaid, HealthChoices Reinvestment Plan for permanent supportive housing allows for the reinvestment of savings in developing permanent supportive housing at the county level.<sup>91</sup> Counties such as Montgomery used these funds to develop rental housing for people with SMI and prioritized people diverted from or leaving the county jail.<sup>92</sup> Pennsylvania also has a statewide affordable housing fund—the Pennsylvania Housing Affordability and Rehabilitation Enhancement (PHARE) Fund—to increase the availability of affordable housing.<sup>93</sup> Stakeholders shared that—before COVID-19—there was interest in expanding this fund. While pilot projects to prioritize people diverted from or leaving incarceration exist throughout the commonwealth—including units financed by OMHSAS with support from MHJAC and DHS—these required specific advocacy from criminal justice stakeholders, such as the Pennsylvania Reentry Council, just to begin. To increase the amount of housing available for permanent supportive housing, again requiring specific support from criminal justice advocates, the Pennsylvania Housing Finance Agency will begin giving “special consideration for developers promoting supportive housing” for people returning from incarceration.<sup>94</sup>

Pennsylvania has a successful permanent supportive housing model for people frequently cycling between systems, the Philadelphia ‘FUSE’ model (also known as Hi-Five), which stakeholders noted is primed to be scaled across the state. Providing supportive services is key to permanent supportive housing, and Pennsylvania's Medicaid state plan and waivers (see Recommendation 14) provide funding services such as pre-tenancy and tenancy supports although this may not reach everyone in the population.<sup>95</sup>

87. Pennsylvania Reentry Council, *2020 Report of the Pennsylvania Reentry Council* (Harrisburg, PA: Office of the Attorney General Office of Public Engagement, Pennsylvania Reentry Council, 2020), <https://www.attorneygeneral.gov/wp-content/uploads/2020/03/2020-PARC-Report.pdf>.

88. Ibid.

89. Under “SET-ASIDES, POOLS AND PREFERENCES” reserves tax credits for two developments per pool for five priority populations, including people leaving incarceration. At least 15 percent of units in each development must be set aside for people within one of these priority populations, see Pennsylvania Department of Community and Economic Development, *2019–2023 Consolidated Plan*.

90. “Pennsylvania Housing Finance Agency Allocation Plan For Program Years 2019-2020 Low Income Housing Tax Credit Program,” Pennsylvania Housing Finance Agency, accessed October 2020, [https://www.phfa.org/forms/multifamily\\_program\\_notices/qap/2019\\_and\\_2020/2019-2020-qap-final.pdf](https://www.phfa.org/forms/multifamily_program_notices/qap/2019_and_2020/2019-2020-qap-final.pdf); Office of Multifamily Housing, Development Division, “2020–2021 Qualified Allocation Plan.” (Columbus: Ohio Housing Finance Agency Office of Multifamily Housing, Development Division, 2019), <https://ohiohome.org/ppd/documents/2020-21-QAP-BoardApproved.pdf>.

91. “Supportive Housing,” Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/Supportive-Housing.aspx>.

92. “HealthChoices Behavioral Health Housing Re-Investment (HRI) Capital Funds Program,” County of Montgomery, Pennsylvania, accessed October 2020, [https://www.montcopa.org/DocumentCenter/View/22893/HRI-Capital-Application-Instructions-01\\_18\\_2019](https://www.montcopa.org/DocumentCenter/View/22893/HRI-Capital-Application-Instructions-01_18_2019).

93. “Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund (PHARE),” Pennsylvania Housing Finance Agency, accessed October 2020, <https://www.phfa.org/legislation/act105.aspx>.

94. Pennsylvania Reentry Council, *2020 Report of the Pennsylvania Reentry Council*.

95. “Application for a §1915(c) Home and Community-Based Services Waiver,” Pennsylvania Department of Human Services, accessed October 2020, [https://www.dhs.pa.gov/Services/Disabilities-Aging/Documents/Alternatives\\_to\\_Nursing%20Homes/Consolidated%20Waiver%20Amendment%20October%202019.pdf](https://www.dhs.pa.gov/Services/Disabilities-Aging/Documents/Alternatives_to_Nursing%20Homes/Consolidated%20Waiver%20Amendment%20October%202019.pdf).

To broaden available housing, states can provide flexible funding, target rental assistance, and provide funding for permanent supportive housing. In Ohio, Targeted Community Alternatives to Prison (T-CAP) provides flexible criminal justice funding for counties to address local needs, with several counties funding permanent supportive housing for people with repeated contacts with the criminal justice system.<sup>96</sup> Several states have taken steps to expand supportive housing for people in the criminal justice system. Alaska's Housing Finance Corporation and Department of Corrections partner to provide rental assistance to people on parole and probation with low incomes.<sup>97</sup> Oregon's 2019 Justice Reinvestment legislation created a new permanent supportive housing benefit for people cycling through jails, courts, and hospitals.<sup>98</sup> In Colorado, the Homeless Solutions Program increases the availability of permanent supportive housing and prioritizes people with SMI who have frequent contacts with public systems, including the justice system.<sup>99</sup> To develop new housing units, Colorado's Governor's Office, Division of Housing, and the Colorado Housing Finance Agency coordinate to jointly underwrite tax credit properties, providing gap funding and project-based vouchers.

**Action Item 13.1: Leverage available federal funding by further prioritizing people leaving or diverted from jails with SMI who experience homelessness through HUD funding streams (such as HUD's Consolidated Plan administered by the Department of Community and Economic Development), as well as through Medicaid** (see Recommendation 14). MHJAC and the DOC should work with DCED and PHFA to prioritize the population through the Consolidated Plan and the Qualified Allocation Plan. The HFA and the DOC are already partnering in the development of the Consolidated Plan to consider the needs of people with criminal records and can further collaborate to prioritize the needs of people diverted from or leaving county jails. The PHFA could bring in additional stakeholders, such as from MHJAC, to advise on including the needs of people diverted from or leaving county jails in the Consolidated Plan.

**Action Item 13.2: Expand the provision of supportive services and tenancy supports by prioritizing the population through upcoming Medicaid waivers** (see Recommendation 14).

**Action Item 13.3: Support local efforts to create permanent supportive housing, both in scatter-site and single-site models, to meet local needs for prioritizing this population.** This could include continuing, and possibly expanding, OMHSAS's work on HealthChoices Reinvestment and expanding upon the Pennsylvania Housing Finance Authority's piloting of supportive housing for reentry. To create additional permanent supportive housing, expand the Philadelphia 'FUSE' model (known also as Hi-Five) to additional jurisdictions. Match funds for local communities to develop additional permanent supportive housing through existing HealthChoices Reinvestment funds. Provide flexible funding to local communities to spur the creation of new housing or new rental assistance prioritizing people diverted from or leaving county jails with SMI who experience homelessness. Prior to COVID-19, there was the political will in the legislature to increase the amount of funding in the PHARE Fund, and criminal justice collaborations could advocate for increasing this in the future.

**Action Item 13.4: While not specific to the jail population, work with the DOC to explore options to align existing reentry housing funding with evidence-based models such as permanent supportive housing.**

96. "Targeted Community Alternatives to Prison (T-CAP)," Ohio Department of Rehabilitation and Corrections, accessed December 2019, <https://drc.ohio.gov/tcap>.

97. "Low-Income Alaskans on Parole or Probation and Youth Aging out of Foster Care," Alaska Housing Finance Corporation, access December 2019, <https://www.ahfc.us/publichousing/rental-programs/low-income-alaskans-parole-or-probation-youth-aging-out-foster-care>.

98. Relating to Behavioral Health; and Declaring an Emergency, SB 973 Oregon State Legislature 2019 Regular Session, accessed October 2020, <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB973>.

99. The program is funded through set-aside tax dollars, see "Disposition of Marijuana Tax Revenue," Colorado Department of Revenue, <https://www.colorado.gov/pacific/revenue/disposition-marijuana-tax-revenue>; "Homeless Solutions Program Project-Based Vouchers Request for Applications," Colorado Department of Local Affairs, accessed December 2019, <https://cdola.colorado.gov/homeless-solutions-program-project-based-vouchers-request-applications>.



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## Recommendation 14: Ensure that people with SMI and repeated contact with the justice system are considered in state efforts to enhance pre-tenancy and tenancy supports through Medicaid state plan amendments and waiver programs.

Leveraging Medicaid to provide pre-tenancy and tenancy supports allows the state to (1) pair non-competitive federal funding with state matching funding; (2) target priority populations identified by the state, which could include people with SMI who are cycling in and out of local criminal justice systems; and (3) tailor benefit packages to state-identified priorities. **Pennsylvania's Medicaid state plan and amendments include some pre-tenancy and tenancy supports, but this is limited to specific populations, not necessarily covering all Medicaid-eligible people with SMI who are diverted from or leaving jail.**

Pre-tenancy and tenancy supports include locating suitable housing, landlord communication, transition planning, and crisis intervention.<sup>100</sup> Evidence-based models of such supports, including rapid rehousing and permanent supportive housing, reduce contact with law enforcement, decrease returns to jail, increase housing stability, and increase connections to preventive care, such as primary care and behavioral health providers.<sup>101</sup> Medicaid is a crucial mechanism that states can leverage to provide these types of housing-related supports for people with disabilities so that they may reside more independently in the community. These Medicaid supports are often aligned with a state plan for community integration so that states are consistent with the Olmstead decision.<sup>102</sup> Pennsylvania first created an Olmstead Plan in 2011 and has revised the plan twice since then. The initial plan built upon research by Dr. Trevor Hadley and Dr. Aileen Rothbard that found that people who were discharged from state hospitals were able to successfully reside independently in the community with supportive services. The current Olmstead Plan further emphasizes the importance of leveraging Medicaid to provide supportive services to allow people with SMI to live independently in the community, with the goal of reducing episodes of institutionalization—including incarceration in jails and prisons—for people with behavioral health conditions.<sup>103</sup> The Olmstead Plan also highlights the importance of Housing First and permanent supportive housing in supporting people to reside independently in the community.

With states facing tough budget decisions due to COVID-19, Medicaid allows state dollars to go farther with matching federal funding to provide necessary community supports. To ensure connections for people leaving jails, communities can implement processes pursuant to state law to suspend, rather than terminate, Medicaid (or Medical Assistance) upon entry to jail.<sup>104</sup> To provide community-based services, Pennsylvania's current waivers to provide community-based services include pre-tenancy and transition services but are not tailored specifically to people with

100. Office of the Assistant Secretary for Planning and Evaluation, *A Primer On Using Medicaid For People Experiencing Chronic Homelessness and Tenants in Permanent Supportive Housing* (Washington, DC: U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, 2014), <https://aspe.hhs.gov/pdf-report/primer-using-medicaid-people-experiencing-chronic-homelessness-and-tenants-permanent-supportive-housing>.

101. National Academies of Sciences, Engineering, and Medicine, *Permanent Supportive Housing*.

102. Medicaid and CHIP Payment and Access Commission (MACPAC) Medicaid's Role in Housing (Washington, DC: MACPAC, 2018), <https://www.macpac.gov/wp-content/uploads/2018/10/Medicaid%E2%80%99s-Role-in-Housing.pdf>. MACPAC summarized the allowable housing-related services available through Medicaid, including (1) individual housing transition services, (2) individual housing and tenancy sustaining services, and (3) state-level housing-related collaborative activities. MACPAC illustrates that Section 1115 waiver demonstrations can cover "housing-related activities or services," Section 1915(b) managed care waivers can provide "housing-related services" to people enrolled in managed care plans, Section 1915(c) home- and community-based services waivers can provide housing-related services for people who would otherwise be in institutional care, Section 1915(i) home- and community-based state plan benefit can provide housing-related services, Section 1915(a) state plan services can provide services for people transitioning from institutions, Section 1915(k) Community First Choice state plan optional benefit.

103. "Olmstead Plan for the Pennsylvania State Mental Health System," Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/Olmstead-Plan.aspx>.

104. Martha R. Plotkin and Alex Blandford, *Critical Connections: Getting People Leaving Prison And Jail The Mental Health Care And Substance Use Treatment They Need: What Policymakers Need To Know About Health Care Coverage* (New York: CSG Justice Center, 2017), <https://csjusticecenter.org/publications/critical-connections/>. Anecdotally, suspending vs. terminating can depend on individual counties since state started with implementation in prisons, and laws did not require jails to implement and there was no dedicated support.

SMI who are diverted from or leaving jails.<sup>105</sup> Without including these people, they may not be connected to Medicaid supports to enable them to live independently in the community. Experts reported that Section 1915 (i) waivers are the primary focus of states now considering additional Medicaid waivers to support permanent supportive housing.

States such as Louisiana and Maryland leverage Medicaid for tenancy supports. Louisiana's permanent supportive housing program is a partnership between the Louisiana Department of Health and the Louisiana Housing Corporation, while Maryland's demonstration waiver provides housing services for people who frequently cycle between systems.<sup>106</sup>

**Action Item 14.1: Amend existing Medicaid waivers, or include the target population in upcoming waivers, to ensure that the target population does not fall into a gap between services.** Ensuring that pre-tenancy and tenancy supports are covered in Medicaid helps meet the Governor's Vulnerable Populations Initiative recommendations to "[p]rovide adequate funding for home and community-based services serving vulnerable populations."<sup>107</sup> Through DHS, ensure that people interacting with multiple public systems—identified through a state-level assessment of local data (see Recommendation 3)—are covered or gain coverage through new waivers. Train new providers in tenancy supports.

**Action Item 14.2: Provide guidance on how existing services through Home- and Community-Based Services (HCBS) waivers can be leveraged to support permanent supportive housing for people leaving or diverted from jails.** Develop guidance for counties in leveraging Medicaid to comply with the requirements of the state's Olmstead Plan specifically for people with SMI who are leaving or diverted from jails.

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## **Recommendation 15: Reduce restrictions at the local level that prevent people with criminal records from accessing housing.**

State-level restrictions on housing hamper efforts to reduce recidivism upon reentry and impose challenges for people with criminal records, parole/probation offices, and community organizations. While these restrictions apply to anyone with a criminal record, they certainly have an impact on people with SMI and can further compromise their ability to find and keep stable and safe housing. Compounding any state restrictions, decisions made by private landlords and Public Housing Authorities can substantially restrict the housing available to people with criminal records. Pennsylvania stakeholders shared that due to stigma and other factors, criminal records make finding suitable housing difficult both for individuals and state agencies on behalf of this population, when such housing is already in short supply. Stakeholders at the community level and in reentry spoke about the challenges that people with criminal records face in finding housing, which is reinforced by reports from the Pennsylvania Department of Community and Economic Development and the Pennsylvania Reentry Council.<sup>108</sup> The Consolidated Plan notes that people exiting jails and prisons experience "extreme difficulty finding suitable housing and may be forced to stay in rooming houses until suitable housing is located."

105. "PA Community HealthChoices (CHC) (formally known as CommCare) (0386.R04.00)," Centers for Medicare and Medicaid Services, accessed October 2020, <https://www.medicare.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/83041>; "Community Living Waiver," Pennsylvania Department of Human Services, accessed October 2020, <https://www.dhs.pa.gov/Services/Disabilities-Aging/Pages/Community-Living-Waiver.aspx>.

106. "LA Residential Options Waiver (ROW) (0472.R02.00)" Centers for Medicare & Medicaid Services, accessed January 2020, <https://www.medicare.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/81826>; "1115 HealthChoice Waiver Renewal" Maryland Department of Health, accessed January 2020, <https://mmcp.health.maryland.gov/Pages/1115-HealthChoice-Waiver-Renewal.aspx>.

107. Governor Tom Wolf's Council on Reform "Recommendations," (Harrisburg: Governor Tom Wolf's Council on Reform, 2019), <https://www.governor.pa.gov/wp-content/uploads/2019/11/20191101-Recommendations-to-Protect-Vulnerable-Populations.pdf>.

108. Pennsylvania Reentry Council, *2020 Report of the Pennsylvania Reentry Council*; Pennsylvania Department of Community and Economic Development, 2019–2023 Consolidated Plan.

HUD published guidance in 2016 that providers of housing can use to develop evidence-based policies that promote access to housing for people with criminal records, ensure the safety of their residents, and comply with the Fair Housing Act.<sup>109</sup> Many cities have adopted Fair Chance Housing laws, which provide greater access to housing for people with criminal records by restricting look-back periods or placing a higher standard for landlords to meet before they can deny housing to people with criminal records.<sup>110</sup> In the private market, landlord education or funds to mitigate any real or perceived property risks can help increase the available supply of housing. Washington has a state-level risk mitigation fund, and Ohio is beginning to pilot a similar program, with a small amount of funding (less than \$10,000) to serve as a type of insurance to provide reassurance to landlords in accepting rental applications from people with criminal records.

State expungement laws can reduce the collateral consequences of conviction resulting from criminal record checks, including at the local level. Public Housing Authorities are overseen at the federal level, so a state's ability to affect their policies is limited. However, state agencies can collaborate with and provide encouragement to Public Housing Authorities, as well as leverage state funding, to help illustrate for Public Housing Authorities the poor outcomes that stem from restrictions against people with criminal records and the importance and benefit of lifting them. State agencies can emphasize how Public Housing Authorities have flexibility in what criminal records they may consider in applications to help build the case for easing restrictions.

**Pennsylvania has fewer state-level restrictions than most states, while also having expungement laws that reduce criminal record barriers in housing.<sup>111</sup> However, restrictions at the local level by landlords and Public Housing Authorities pose significant hurdles for people with criminal records.** The state does not limit criminal record look-back periods or the types of criminal records that may be considered in housing applications. The Pennsylvania Reentry Council's 2020 report recommends expanding non-discrimination protections to people with criminal records or limiting landlords from seeing criminal records during the application process.<sup>112</sup> The commonwealth's expungement and sealing of records further limit the impact of criminal records on housing, as landlords are not able to view expunged or sealed records.<sup>113</sup> The expungement process is operated by the State Police in collaboration with local Clerk of Courts.<sup>114</sup> By removing criminal record restrictions—or mitigating them by providing an incentive for landlords, such as landlord risk mitigation funds—state agencies can expand private market housing available for evidence-based models and a full continuum of services for this population.

109. For Public Housing Authorities, HUD clarified through Notice PIH 2015-19 in 2015 that, aside from mandated exclusions such as sex offenses, meth convictions, and arson, the use of criminal records in federally subsidized housing is a decision up to local housing authorities. Office of General Counsel *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Washington, DC: U.S. Department of Housing and Urban Development, Office of General Counsel, 2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

110. States can lift up local examples of Fair Chance at Housing laws, such as Seattle, see CB 119015 Office of the City Clerk (Seattle 2017), <http://seattle.legistar.com/LegislationDetail.aspx?ID=3089232&GUID=49272C76-0464-4C6E-A1FF-140591D00410>; Champaign, Illinois, Municipal Code, § 17, [https://library.municode.com/il/champaign/codes/code\\_of\\_ordinances?nodeId=MUCO\\_CH17HURI\\_ARTIINGE&showChanges=true](https://library.municode.com/il/champaign/codes/code_of_ordinances?nodeId=MUCO_CH17HURI_ARTIINGE&showChanges=true); or Newark, New Jersey, § 12-1630, <https://newark.legistar.com/LegislationDetail.aspx?ID=1159554&GUID=6E9D1D83-C8D7-4671-931F-EE7C8B2F33FD&Options=&Search=&FullText=1>.

111. "National Inventory of Collateral Consequences," Council of State Governments Justice Center, accessed October 2020, <https://niccc.csgjusticecenter.org/>. Some states have very few state-level restrictions based on criminal records, such as Kentucky (one), Minnesota (three), and Rhode Island (five). Pennsylvania has eight state-level restrictions on housing, including 23 Pa.C.S. § 5329 *Ineligible to reside with person seeking child custody*; 23 Pa.C.S. § 6344 *Ineligible to reside with prospective adoptive/foster parent*; 23 Pa.C.S. § 6344.1 *Ineligible to reside at family day-care home*; 24 P.S. § 13-1327.1 *Ineligible to reside in home conducting home education program*; 35 P.S. § 1553.3 *Ineligible to reside with victim of domestic/sexual violence* [Effective April 24, 2019]; 68 P.S. § 250.505-A *Terminate residential tenancy* (controlled substances offenses); 43 Pa. Code § 7.11 *Terminate residency in State Veterans Home*; 43 Pa. Code § 7.3 *Ineligible for admission to State Veterans Home*.

112. Pennsylvania Reentry Council, *2020 Report of the Pennsylvania Reentry Council*.

113. Pa. Cons. Stat. § 9122 <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=22&subscn=0>; Act of Jun. 28, 2018, P.L. 402, No. 56 Cl. 18 automatically seals criminal records after 10 years of no arrests for people with charges that did not result in conviction, some misdemeanors and summary convictions, see HB 1419 General Assembly, Re. Sess. (Penn. 2018), <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>.

114. "Criminal Expungement Process," Pennsylvania State Police, accessed October 2020, <https://www.psp.pa.gov/Pages/Criminal-Expungement-Process.aspx>.

**Action Item 15.1: Encourage local Public Housing Authorities to remove barriers for people with criminal records.**

As Public Housing Authorities are overseen at the federal level, the state could work with local HUD offices to provide TA to Public Housing Authorities on reducing criminal record barriers. The DOC has already begun encouraging local Public Housing Authorities to remove barriers for people with criminal records through the Vera Institute of Justice's Opening Doors project. State agencies could also incentivize Public Housing Authorities by tying state funding for Public Housing Authorities to reducing criminal record barriers.

**Action Item 15.2: Encourage limited look-back periods for certain criminal records in housing applications.**

No state currently has a similar statute; most restrictions exist at the city level and often meet resistance from landlords and property owners. If enacting a statute is not possible, the state could convene a working group—to build buy-in from stakeholders—consisting of landlords and property owners and representatives from housing and criminal justice agencies to explore the impact of limiting look-back periods in rental applications for people with criminal records. Develop a memorandum, as New York State did, detailing protections for renters regarding criminal record checks and guidance for landlords on when they may consider criminal records.

**Action Item 15.3: Explore incentives for landlords to accept rental applications from people with SMI who have criminal records, including those submitted directly or submitted by reentry professionals and others on their behalf.** Explore implementing a landlord risk mitigation fund, as in Ohio, to incentivize private landlords to accept housing applications from people with SMI who have criminal records.

# Appendix A. Mental Health and Justice Advisory Committee (MHJAC) State Policy Scan Project Committee Members

## Executive Committee Members

**Virginia Mastrine**, Human Services Program Representative, Office of Mental Health and Substance Abuse Services, Department of Human Services

**Brinda Carroll Penyak**, Deputy Director, County Commissioners Association of Pennsylvania

**Jessica Penn Shires**, Human Services Program Specialist, Office of Mental Health and Substance Abuse Services, Department of Human Services

**William F. Ward**, Partner, Rothman Gordon, P.C.

**Jackie Weaknecht**, Deputy Director, Criminal Justice System Improvements, Pennsylvania Commission on Crime and Delinquency

## Mental Health and Justice Advisory Committee Subcommittee Members

### Chair

**William F. Ward**, Partner, Rothman Gordon, P.C.

### Members

**Scott L. Bohn**, Executive Director, Pennsylvania Chiefs of Police Association

**Kathleen C. Dougherty, MD**, Associate Professor of Psychiatry, Vice Chair for Quality Improvement, Hershey Medical Center

**Kimberlee Drum, RN**, Director, Office of Health Care Systems Advocate, Pennsylvania Department of Corrections

**Christina M. Finello, JD, PhD**, Deputy Director of Human Services, Bucks County Division of Housing and Human Services

**Deborah Gross, Esq.**, President and CEO, Pennsylvanians for Modern Courts

**Justice James J. Fitzgerald, III**, Senior Judge (Retired), Superior Court of Pennsylvania

**Catharine Kilgore**, CJAB Administrator, Dauphin County District Attorneys' Office

**Lucy Kitner**, Executive Director, Pennsylvania Association of County Administrators of Mental Health & Development Services

**Jennifer Lopez-Cerrato**, Executive Director, Friends Association

**Angela Lowry**, Program Administrator, Problem Solving Courts Program, Administrative Office of Pennsylvania Courts

**Maida Malone**, President (Retired), Pennsylvanians for Modern Courts

**Virginia Mastrine**, Human Services Program Representative, Office of Mental Health and Substance Abuse Services, Department of Human Services

**Maureen McManus**, Executive Director, Lehigh Valley Pretrial Services Inc.

**Edward B. Michalik, PsyD**, Administrator (Retired), Berks County Office of Mental Health and Developmental Disabilities

**Joseph Mittleman, JD**, Director of Judicial Programs, Administrative Office of Pennsylvania Courts

**Michael Pennington**, Executive Director, Pennsylvania Commission on Crime and Delinquency

**Brinda Carroll Penyak**, Deputy Director, County Commissioners Association of Pennsylvania

**Detective Dr. Patty Poloka, DM**, Employee Wellness & Resource Coordinator; Allegheny County CIT Coordinator, Pittsburgh Bureau of Police

**Kathy Quick**, Executive Director, Pennsylvania Mental Health Consumers' Association

**Jessica Penn Shires**, Human Services Program Specialist, Office of Mental Health and Substance Abuse Services, Department of Human Services

**Deborah Ann Shoemaker**, Executive Director, Pennsylvania Psychiatric Society

**Richard D. Steele**, Executive Director, Juvenile Court Judges' Commission

**Jackie Weaknecht**, Deputy Director, Criminal Justice System Improvements, Pennsylvania Commission on Crime and Delinquency

**H. Jean Wright, II, PsyD**, Director, Behavioral Health and Justice Related Services Division

**Ashley Yinger, PhD**, Dauphin County Stepping Up Coordinator, Dauphin County District Attorneys' Office



# Appendix B. List of People Interviewed for Project as Key Informants

**Ana Arcs**, Policy Specialist,  
Pennsylvania Department of  
Human Services

**Megan Barbour**, Policy  
Director, Pennsylvania  
Insurance Department

**Christy Beane**, Assistant Director  
of Judicial District Operations and  
Programs, Administrative Office of  
Pennsylvania Courts

**Joseph Blackburn**, Executive  
Director (Retired), Pennsylvania  
Chiefs of Police Association

**Scott Bohn**, Executive  
Director, Pennsylvania Chiefs of  
Police Association

**David Buono**, Senior Advisor  
to the Commissioner/  
Consumer Liaison, Pennsylvania  
Insurance Department

**Julia Burke**, Executive Director,  
Public Defender Association  
of Pennsylvania

**Phyllis Chamberlain**, Executive  
Director, Pennsylvania  
Housing Alliance

**Michael Cortez**, Legal Counsel  
and Executive Director,  
Judiciary Committee, Senate of  
Pennsylvania, Office of Senator  
Lisa Baker, 20th Senatorial District

**Maria Dispenziere**, Deputy  
Policy Director, Pennsylvania  
Department of Aging

**Kimberlee Drum**, Director,  
Office of Health Care Systems  
Advocate, Pennsylvania  
Department of Corrections

**Nicole Faraguna**, Policy Director,  
Pennsylvania Department of  
Conservation & Natural Resources

**Justice James J. Fitzgerald, III**,  
Senior Judge (Retired), Superior  
Court of Pennsylvania

**Tom Greishaw**, Director,  
Office of County Inspections  
and Services, Pennsylvania  
Department of Corrections

**Pennie Hockenberry**, Policy  
Director, Pennsylvania Office of  
Victim Advocate

**Janene Holter**, Strategic  
Initiatives Operator, Bureau of  
Narcotics Investigation and Drug  
Control, Pennsylvania Office of  
Attorney General

**Karri Hull**, Director of Criminal  
Justice Planning, Centre  
County Criminal Justice  
Planning Department

**Daniel Jurman**, Executive  
Director, Pennsylvania Office of  
Advocacy and Reform

**Lucy Kitner**, Executive Director,  
Pennsylvania Association of  
County Administrators of Mental  
Health & Development Services

**Ben Laudermilch**,  
Special Assistant to the  
Secretary, Pennsylvania  
Department of Corrections

**Angela Lowry**, Problem  
Solving Courts Administrator,  
Administrative Office of  
Pennsylvania Courts

**Maida Malone**, President (Retired),  
Pennsylvanians for Modern Courts

**Justice Ed Marsico**,  
Court of Common Pleas,  
Dauphin County Court

**Brian McShane**, Senior Program  
Manager, The Corporation for  
Supportive Housing Pennsylvania

**Jonathan McVey**, Acting Policy  
Director, Pennsylvania Department  
of Human Services

**Members of the Comprehensive  
Behavioral Health Task  
Force**, County Commissioners  
Association of Pennsylvania

**Bob Merwine**, Director, Project  
Management Office, Public  
Safety Information Technology  
Center, Pennsylvania Office  
of Administration

**Edward B. Michalik**, Administrator  
(Retired), Berks County  
Office of Mental Health and  
Developmental Disabilities

**Geoffrey Moulton**, Pennsylvania  
State Court Administrator,  
Administrative Office of  
Pennsylvania Courts

**Paul Opiyo**, Policy Specialist,  
Office of the Secretary,  
Pennsylvania Department  
of Community and  
Economic Development

**Jessica Penn Shires**, Human  
Services Program Specialist,  
Office of Mental Health and  
Substance Abuse Services,  
Department of Human Services

**Brinda Carroll Penyak**, Deputy  
Director, County Commissioners  
Association of Pennsylvania

**Kathy Possinger**, Director,  
Center for Community Housing  
Development, Pennsylvania  
Department of Community and  
Economic Development

**Lynette Praster**, Director,  
Center for Community  
Services, Pennsylvania  
Department of Community and  
Economic Development

**Zackary Reber**, Policy  
Director, Pennsylvania  
Department of Community and  
Economic Development

**Greg Rowe**, Director of Legislation  
and Policy, District Attorneys  
Association of Pennsylvania

**Representative Michael  
Schlossberg**, 132nd Legislative  
District, Pennsylvania House of  
Representatives

**Tracy Small**, CIT Coordinator,  
Centre County Criminal Justice  
Planning Department

**Thomas Snedden**, Director,  
PACE Program, Pennsylvania  
Department of Aging

**Jennifer Storm**, Commonwealth  
Victim Advocate, Pennsylvania  
Office of Victim Advocate

**Andrea Tuominen**, Assistant  
Court Administrator,  
Administrative Office of  
Pennsylvania Courts

**Barbara Valaw**, Director, Bureau  
of Quality Assurance, Pennsylvania  
Department of Aging

**Lindsay Vaughan**, Executive  
Director, District Attorneys  
Association of Pennsylvania

**Jamey Welty**, Policy Director  
Office of Mental Health and  
Substance Abuse Services,  
Department of Human Services

**Diana Woodside**, Director  
of Policy & Legislative  
Affairs, Pennsylvania  
Department of Corrections

**Ashley Yinger**, Dauphin County  
Stepping Up Coordinator, Dauphin  
County District Attorneys' Office

**Shea Zwerver**, Executive  
Policy Specialist, Pennsylvania  
Department of Conservation &  
Natural Resources

# Appendix C: List of Recommendations

NOTE: Priority recommendations are indicated with an arrow.

## Priority Area 1: Improving local capacity to collect data and share information

- » **Recommendation 1:** Adopt and implement common definitions across counties to identify the target population and improve connections to care.
- » **Recommendation 2:** Implement universal mental health, substance use, and homelessness screenings with timely follow-up clinical assessment, as needed, to identify people experiencing homelessness, people who have SMI, and/or substance use disorders (SUDs) at booking.

**Recommendation 3:** Create a statewide database or data warehouse that local agencies can access with appropriate privacy protections to enable the collection, analysis, and use of data and allow for continuity of care as a person moves between systems and across counties.

- » **Recommendation 4:** Develop guidance for local jurisdictions about how to collect, analyze, and share data across agencies.

**Recommendation 5:** Whenever possible, specify that state and local agencies collect and report on particular metrics (e.g., Stepping Up four key measures).

- » **Recommendation 6:** Increase staffing capacity at the local level to support planning, coordination, data collection, and analysis across agencies (e.g., local coordinators, data analysts).

**Recommendation 7:** Align state information sharing and privacy laws for substance use and mental health with federal guidelines for HIPAA and 42 CFR Part 2.

- » **Recommendation 8:** Develop and issue guidance in plain language on what information can and can't be shared and with whom across systems consistent with federal and state privacy protections.

- » **Recommendation 9:** Issue model forms that can be used across agencies/providers to share health-related information consistent with federal and state privacy laws and protections.

## Priority Area 2: Increasing local diversion as early as possible

- » **Recommendation 10:** Support, expand, and improve programs and policies to refer people experiencing symptoms of mental illness to treatment and stabilization before they are arrested and booked, including supporting and broadening Law Enforcement Treatment Initiative (LETI) programs across the state and clarifying the law of arrest and citation to encourage the use of diversion in appropriate circumstances.

- » **Recommendation 11:** Improve the quality of diversion and treatment options for people who are charged or convicted. Encourage mental health courts to adhere to a standard set of best practices by (1) establishing a set of accreditation criteria and (2) giving funding preference to accredited courts.

## Priority Area 3: Increasing local availability of and connections to housing

- » **Recommendation 12:** Formalize collaboration between housing, criminal justice, and mental health agencies at the state and local levels to improve housing outcomes for people with SMI in local criminal justice systems, especially those with repeated contact.

**Recommendation 13:** Increase availability of and connections to permanent supportive housing for people with SMI who have repeated contact with the justice system.

**Recommendation 14:** Ensure that people with SMI who have repeated contact with the justice system are considered in state efforts to enhance pre-tenancy and tenancy supports through Medicaid state plan amendments and waiver programs.

**Recommendation 15:** Reduce restrictions at the local level that prevent people with criminal records from accessing housing.