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An APA and SAMHSA Initiative



# Mental Health in the Criminal Justice System

## What to Expect When You or a Family Member is Arrested or Incarcerated

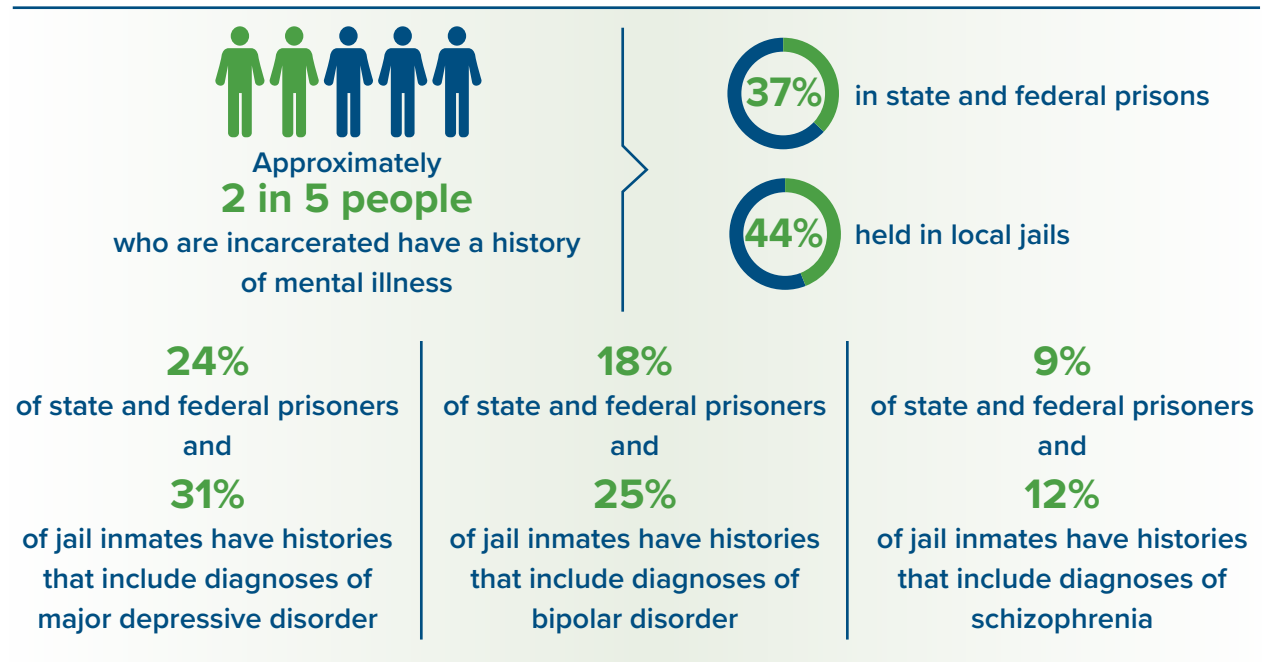


A GUIDE FOR INDIVIDUALS AND FAMILIES

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People who have serious mental illness (SMI) are involved in the criminal justice system at higher rates than the general public. In many communities, the behavioral health and criminal justice systems work together on policies and programs to help redirect or “divert” people from the criminal court system into treatment. Despite this work, barriers continue to exist that contribute to higher numbers of arrest and incarceration:<sup>1</sup>



It's important for individuals and family members to understand what happens when someone is involved in the criminal justice system. For example, it's helpful to know what happens when someone is arrested, and what options are available that may allow for treatment instead of time in jail. If you're the family of someone who has serious mental illness, it's also important to know how you can support them if they are arrested or jailed.

The following sections provide a general overview of the processes that occur in the criminal justice system. Use this helpful guide to identify when and how you may be able to ask for diversion to mental health treatment, and how to support and advocate for a loved one throughout the process.

### Why Does Law Enforcement Response Vary?

When law enforcement responds to a call that involves someone who has mental illness, there are many factors that affect whether or not someone is arrested:

- What kind of disturbance or crime is reported
- The presence of police as witnesses vs someone else's reports
- Witness accounts and victim involvement
- Domestic situations in which officers are not permitted to use discretion in arresting someone
- Local policies regarding crisis response
- The availability of crisis centers or hospital services for diversion into treatment

Many areas have [Crisis Intervention Teams \(CIT\)](#) or other specialized responses that can include law enforcement in combination with mental health response teams. Law enforcement officers trained in crisis response may be called to scenes where they work to deescalate situations and help someone access treatment rather than face arrest. In many areas, CIT programs are effective at diverting individuals into crisis services and help bridge the gap for longer term treatment. However, there are times when an arrest is unavoidable, or more frequently, there are limited options or [no resources](#) in the community for diversion.

#### **Helpful tips for individuals and family members:**

- ☑ Learn what resources are available in your community, including whether there are specialized responses for mental health emergencies.
- ☑ If you or a family member calls 911, there is the chance that medical or mental health response may accompany law enforcement. If specialized mental health teams aren't available, ask for a CIT trained officer to respond.
- ☑ Remain calm and be prepared to share information on symptoms and diagnosis, medications, or other relevant history.
- ☑ Remember that law enforcement involvement means that responding officers are in control of the call. Ask them to view the situation as a mental health crisis, but don't argue or interfere.
- ☑ Develop a plan for yourself, including supports that you can call to help you through a difficult experience.

#### **What Happens After Arrest?**

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

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

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

In some areas, prosecutors can offer diversion programs at this point as an alternative to continuing the justice system process. This is called pre-trial diversion and it allows the individual to have their plea and trial put 'on hold' if conditions for treatment are met. Successful completion results in the charges being dismissed. If the individual does not meet conditions of the program, the trial process resumes.

### Helpful tips for family members:

- ☑ Attend the arraignment hearing and introduce yourself to the public defender or other attorney that's retained for the case.
  - Share a summary of your loved one's medical and psychiatric information.
  - Ask about the possibility of pre-trial diversion or other jail diversion programs.
- ☑ Ask your family member's treatment provider to contact the jail staff or jail physician or nurse with information on diagnosis and medication.

### What Happens if Acute Symptoms are Occurring?

In many cases, people who have SMI experience serious symptoms that lead to contact with law enforcement and further involvement in the criminal justice system. These untreated symptoms can result in someone being unable to participate in their court case. At arraignment – or at any point in the court process – attorneys on either side of the case may feel that the person's symptoms are a significant interference. They may then request an evaluation of the person's competence to stand trial (CST).

If this happens, the judge will typically order a competency evaluation (CST) to be conducted by a forensic evaluator. There may also be an option for the defense to hire their own evaluator.

- For court-ordered evaluations, findings are reported to the court and the judge decides whether the defendant is able to continue with the trial.
  - If Yes: the criminal case proceeds as usual
  - If No: the judge orders treatment to restore competency
- Restoration treatment can occur in jail, in the community (if bond or bail is granted), or in a hospital setting. However, it is most often conducted in state forensic hospitals. Some communities have opted for “jail-based” restoration services.
- The goal of restoration treatment is to help the individual stabilize enough to understand their role and participate as a defendant in the criminal justice process.

For some people, the process of evaluation, treatment, and a judge's ruling on competency can become a cycle that occurs multiple times before the criminal case can resume. This means that some people experience case delays and remain in jail for much longer than they would for a guilty verdict.<sup>2,3</sup>

### **Helpful tips for family members:**

- ☑ Keep the lines of communication open with your loved one and encourage them to participate in treatment regardless of the setting they are in. Many people decline medications in jail, and this can perpetuate the cycle of relapse.
- ☑ Remain in communication with the attorney representing your loved one. Ask what can be done to support treatment efforts during the competency restoration process.
- ☑ Encourage your loved one to sign a release of information to allow information sharing about clinical issues. Family members may be able to call the jail healthcare staff.

### **What Happens if an Individual is Found Guilty?**

A guilty verdict can have several possible outcomes, such as being released due to time served, or probation with supervision and conditions. Many areas offer another form of jail diversion or “alternatives to incarceration” at this point in the justice system process. This can include probation that consists of participation in a mental health, drug, or veterans treatment court program. These specialty courts allow for deferred adjudication, which means that the outcome of the case is put on hold and charges may be dismissed after a period of compliance.

Specialty courts are overseen by judges that understand the use of problem-solving treatment models instead of traditional criminal case processing. Participation is voluntary and the individual must submit a guilty or a no contest plea. However, a judgment of guilt is not entered into the person’s court record while they participate in a treatment plan. In some areas there may be a judgment of guilt, but to a lesser charge. Family members and participants should ask questions about what agreeing to participate will mean to their criminal record. The judge supervising their case provides clear guidelines for treatment adherence and success. There are also guidelines for accountability, which can include re-instatement of the criminal justice process.

Successful completion of treatment and program requirements may then lead to the dismissal of charges. In other words, in spite of a guilty or a no contest plea, successful program completion means that the individual will not have a recorded criminal conviction.

When diversion isn’t available or possible, a guilty verdict can result in a jail or prison term, depending on the length of the sentence received. Typically, sentences that are less than a year are served in a jail. Longer sentences are served in prisons, which have greater housing capacity. Purpose and size differences between jail and prison facilities mean that factors related to health care also differ, including how mental health services are delivered.

When a person is incarcerated, relationships with their current mental health providers come to an end. Individuals move from the community or private mental health system into the forensic, or correctional mental health system.

As with medical care, mental health care is constitutionally guaranteed during incarceration, and this has been upheld in several landmark court cases. National organizations such as the [American Psychiatric Association](#) and the [National Commission on Correctional Health Care](#), have developed formal policies on standards for mental health services in correctional settings.

These standards, informed by certain court cases and clinical expectations, follow several basic guidelines:

- Intake screening for mental health and referral
- Mental health evaluations when intake screenings reveal symptoms or conditions
- Mental health treatment, including crisis intervention and acute care
- Community reentry and transfer planning
- Suicide prevention activities

### **What Can I Do to Help Myself or a Family Member?**

At several points within the legal process, there are ways you can support and advocate for yourself or a family member.

- ☑ During the pretrial phase or onset of a jail term, you may be able to arrange for the current treatment provider to discuss treatment with the jail healthcare staff. This can sometimes be coordinated by the attorney who represents the individual.
  - A signed release will be needed, due to privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA) and Title 42 of the Code of Federal Regulations (CFR) Part 2.
  - Nothing prevents you from sharing information as needed with healthcare staff to support your loved one and convey information that they may be unwilling or unable to convey.
  - Ask that jail staff be provided with information on current medications.
  - Ask the provider if they can assist with continuity of care whenever possible.
  - Ask the provider for suggestions on how you can support your loved one.
- ☑ If awaiting trial, create a plan to manage mental health in the event of a jail or prison sentence.
  - Mental health screening occurs during the jail intake process. Encourage your loved one to provide open and honest responses.
  - Remind them to request a referral for mental health and substance use services during intake, and ask about processes for ongoing treatment.
  - Remind them to ask the jail's medical or mental health staff for instructions on what to do if they experience a crisis or have difficulties with medications, detoxification from substances, or other related challenges.

It can be traumatic and stigmatizing to be arrested or jailed. Family and social support are crucial to improved outcomes. Hopeful, nonjudgmental conversations can occur at any point in the process.

- ☑ Encourage your family member to find healthy ways to cope with their arrest and experience with the justice system. Talking with their treatment provider can help.
- ☑ Avoid guilt, criticism, or blaming. Instead, talk about ways to help them manage from day to day and learn from the experience, for personal growth and to move forward.
- ☑ Talk about ways to maintain your relationship pre- and post-release. This includes ways to effectively communicate and rebuild trust. Honest conversations are helpful to the process of healing.

Although it's a difficult topic, suicide is a reality within the criminal justice system. Suicide is the leading cause of death in local jails, accounting for nearly 30% of inmate deaths.<sup>4</sup> Yet even in a jail or prison environment, there is hope – and it's worth emphasizing.

- ☑ Help your family member create a safety plan or [psychiatric advance directive](#) in the event they experience suicidal feelings during incarceration.
- ☑ **Alert jail staff if you suspect your family member is suicidal, or has expressed suicidal feelings. Consider keeping numbers of relevant jail staff handy in the event you need to contact someone in an emergency, or call the main jail number and ask for the officer in charge.**
- ☑ Encourage your family member to use the jail's process for a mental health crisis, which should be described during the intake screening and evaluation.
- ☑ Identify other areas of support in the jail or prison environment: chaplains, support groups, and educational resources.

Managing stress and isolation is also important for mental wellbeing and to improve treatment efforts. Strategies might include reading books from the prison library, writing letters or journaling, regular stretching and exercise, deep-breathing techniques, and prayer or meditation.

### What Happens After Release from Incarceration?

Release from jail or prison and community reentry may occur through a parole process or an individual may be responsible for terms of probation. Planning should ideally begin before someone is released. However, release planning is often complicated by moving release dates, little advance notice, or a lack of community resources. Reentry programs can sometimes be minimal, which is an additional cause for concern.

The risk of re-arrest grows when individuals return to the community with limited support. Factors such as lack of access to treatment and medication, housing, and lack of income can result in symptom relapse, homelessness, and re-arrest.<sup>5,6</sup>

A lack of family and social support is also impactful.<sup>7</sup> Stigma, disrupted relationships, and the resulting isolation can lead to worsened mental health. All of these issues can affect whether or not a person reoffends. Additionally, for those who struggle with substance abuse, these factors can also lead to relapse and the heightened risk of overdose that occurs within the first two weeks of release.<sup>5,6</sup>

Accidental overdose is the leading cause of death among recently released inmates, but even as time passes, it remains the leading cause of death. Next leading causes of death include chronic health conditions such as cardiovascular and infectious diseases, as well as cancer. Connection to mental and physical health care is key to reducing these risks in the short and long-term.

Studies show that participants benefit when reentry programs address practical needs, along with social support and access to care. There are three general areas that can be viewed as ‘recovery capital’ – basic needs that promote recovery and reduce the risk of re-arrest:<sup>6</sup>

- **Structural supports** – These include housing and employment which are critical for stability, relapse prevention, and overcoming stigma and discrimination.
- **Supportive relationships** – This starts with case workers who are non-judgmental and empathetic. They can help with skills to improve interpersonal relationships, feel like a positive part of the community, and build a sense of capability.
- **Continuity of care** – This includes reactivating Medicaid, and accessing ongoing care through community mental and medical health services.

Many communities employ a model known as FACT, or Forensic Assertive Community Treatment. FACT teams use the Assertive Community Treatment (ACT) model with added focus on preventing repeated criminal justice system involvement. ACT teams provide intensive treatment and services within the community, rather than in a residential or hospital setting. This can be a helpful approach for ensuring key areas of risk, treatment, and support are met.<sup>8</sup>

#### **Helpful tips for family members:**

- Find out when reentry planning will occur prior to release.
- Make a checklist of practical supports and resources that will be needed – at reentry and long after release.
  - Develop a plan for reentry if no program exists in your community.
  - If a program exists, seek resources or options to help fill any gaps in the reentry plan.
  - Find out if your community mental health system includes FACT teams.
- Seek opportunities to expand positive social networks and engage with others. This can be vital to help prevent the recurrence of acute symptoms of mental illness, relapse of substance use, and re-arrest.

#### **Can Further Criminal Justice System Involvement Be Prevented?**

Developing insight and building skills for ongoing stability and success is important to preventing re-arrest. Continue to have honest and empathetic conversations about needs, risks, personal strengths, and goals. These are foundational to maintaining motivation to participate in treatment.



Focusing on healthy strategies to achieve personal goals is also important for overcoming challenges. Unexpected barriers or problems can increase the risk of worsening symptoms of mental illness and re-arrest. It's important to talk about how to build strong problem-solving and self-advocacy skills.

**Helpful tips for family members:**

- ☑ Stigma of arrest and incarceration can make it difficult to return to social situations, including family gatherings, or re-establishing friendships. Support other family members who have concerns about interacting with someone who's been incarcerated, but don't force unwanted engagement.
- ☑ Encouragement and modeling good communication and social skills can help everyone feel more comfortable.
- ☑ Be mindful that new mental health symptoms can occur, and that existing symptoms can sometimes worsen. The experience of arrest and incarceration can be traumatic and life-changing, and it may take time to process those emotions.
- ☑ Remain aware of potential risks:
  - Social isolation
  - Substance use relapse
  - Problems acquiring medication
  - Suicide or violence
- ☑ Help your loved one develop emergency plans for a crisis and continuity of care. Include how to maintain updated release forms and contact information for treatment providers.

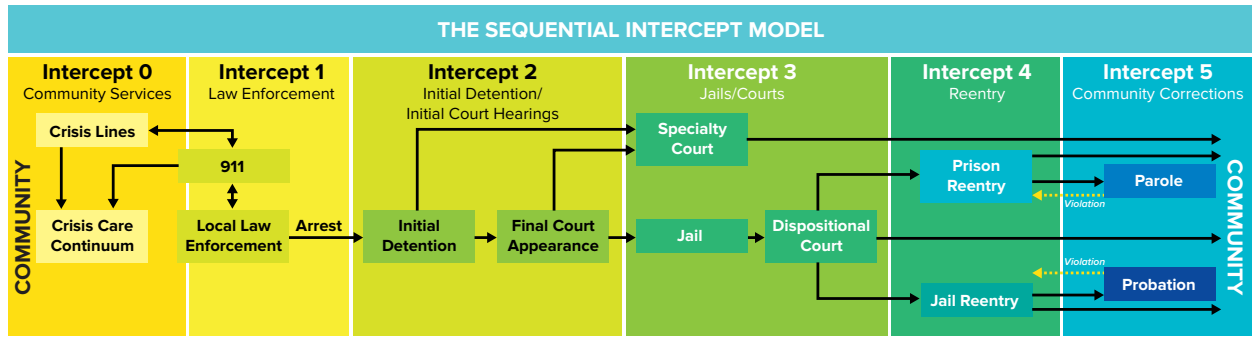


**Peer and mentor support can be helpful to successful reentry.**

- ✓ **Reinforces pro-social behavior**
  - ✓ **Supports substance abuse rehabilitation**
  - ✓ **Provides motivational and therapeutic benefits**
- 

**How Can I Help Improve Outcomes in My Community?**

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



It's important to know the laws in your state and be aware of changes in policy. It improves your ability to manage personal or family outcomes. It also helps support local efforts to improve outcomes for anyone with mental illness who becomes involved with the criminal justice system.

Opportunities exist to provide input and feedback, study solutions, and develop community resources and supports. Programs such as [CIT](#) and the [Stepping Up](#) Initiative bring a variety of stakeholders to the table to plan solutions and share resources. Individuals with mental illness and their family members are community stakeholders too.

Here are ways you can take action right now:

- Learn about laws and policies in your state and local area.
- Keep emergency plans updated, including resources that are specific to criminal justice system involvement
- Find ways to advocate for improvements to the system by participating in community stakeholder initiatives.

The shared goal is to find solutions and stop repeated involvement in the criminal justice system for people with serious mental illness.

## ADDITIONAL RESOURCES

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

NAMI offers information for individuals and families on:

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

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

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

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

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