



Q & A

Professionally Accepted Standards for Prison/Jail Diversion and Discharge Planning Programs for Individuals with Psychiatric Disabilities

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Q. What are the current professionally accepted standards for diversion and discharge planning programs for individuals with psychiatric disabilities from jails and prisons?

A. There are a number of key national and international standards and best practices for jail diversion programs and re-entry planning for individuals with psychiatric disabilities transitioning back to the community from jails and prisons.¹

I. Introduction

Jails and prisons² are ill equipped to address the needs of inmates with psychiatric disabilities and the conditions of confinement often exacerbate the symptoms of their psychiatric illness.³ Nevertheless, over the last two decades, the number of individuals with psychiatric disabilities incarcerated in jails and prisons has increased substantially. Today, for example, there is an estimated 800,000 individuals with serious mental illness in jail each year in the United

¹ For Q&As on diversion from the juvenile justice system see, Robert Fleischner, Q&A: Diversion of Youth from Detention and Secure Confinement, Parts I & II (2005) available at http://tascnow.com/tasc/images/Documents/Publications/Q_A/TASC_0504_jj_diver1.pdf (last visited Aug. 26, 2013).

² For purposes of this discussion, we make the distinction that jails usually house individuals who have been charged with crimes and are awaiting trial or are serving short sentences. Prisons house people convicted of crimes and are serving longer sentences but practice among jurisdictions vary.

³ Steven K. Hoge, et al., Outpatient Services for the Mentally Ill Involved in the Criminal Justice System : A Report of the Task Force on Outpatient Forensic Services, Am. Psychiatric Ass'n (2009), available at <http://www.psych.org/learn/library--archives/task-force-reports> (last visited August 22, 2013).

States.⁴ In an effort to curtail the admission and readmission of individuals with psychiatric disabilities, local and state governments,⁵ the federal government,⁶ mental health professionals, courts and advocates have designed, developed and implemented a range of diversion and re-entry planning programs and related services.

This Q & A outlines the key components of diversion programs and re-entry planning and services for people with psychiatric disabilities and provides an extensive bibliography of select sources for standards and best practices.

II. BEST PRACTICES & APPLICABLE STANDARDS

A. *Jail Diversion: Essential Components*

Jail diversion has proven to be an effective means to diminish the time individuals with serious psychiatric disabilities spend in jail and to improve their access to community services while not increasing the risk to public safety.⁷ Due to the success of jail diversion, the number of different jail diversion programs throughout the United States has grown substantially over the past ten years.⁸ Nevertheless, advocates know from experience that there still are too few programs and many that do exist are under funded and underutilized.

Researchers have studied diversion programs and there is now a consensus on

⁴ SAMHSA's GAINS Center, What is Jail Diversion? available at: http://gainscenter.samhsa.gov/topical_resources/jail.asp (last visited August 18, 2013). See also Bureau of Justice Assistance, US Dept. of Justice, Justice and Mental Health Collaboration Program, Program Details (finding that 14.5 % of men and 31% of women admitted to US jails had a serious mental illness) available at: https://www.bja.gov/ProgramDetails.aspx?Program_ID=66 (last visited August 19, 2013); see also Amy L. Solomon, et al., Life After Lockup: Improving Reentry from Jail to Community (2008) available at http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf (last visited August 21, 2013).

⁵ Kati Guerra, Crisis Care Services for Counties: Preventing Individuals with Mental Illnesses from Entering Local Correctional Systems, (2010), available at: www.naco.org/newsroom/pubs/Documents/Health%20Human%20Services%20and%20Justice/CrisisCarePublications.pdf (last visited August 26, 2013).

⁶ See authorization for grants for jail diversion programs at 42 U.S.C. §§290bb-38; and National Institute of Justice, Serious and Violent Offender Reentry Initiative (SVORI) program (coordinated efforts to facilitate successful re-entry of individuals deemed serious and violent offenders including: provision of housing, employment training, substance abuse programs, and other services) described at: <http://www.nij.gov/topics/corrections/reentry/> (last visited on August 22, 2013).

⁷ Henry J. Steadman & M. Naples, Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-occurring Substance Use Disorders, 23 Behav. Sci. Law 163 (2005).

⁸ Some diversion programs are pre-arrest programs that divert a person from the criminal justice system at the time they interact with the police but before an arrest is made or charges are filed and there are also post-arrest diversion programs where the person is diverted after arrest but before or at sentencing. Steadman, supra n. 7 at 164.

the necessary components for a successful jail diversion program.⁹ They include: 1) interagency collaboration and coordination; 2) active involvement; 3) “boundary-spanners” or “champions” who facilitate interdisciplinary coordination and collaboration;¹⁰ 4) leadership; 5) cross-trained case managers; 6) accessible community programs for people with psychiatric disabilities; 7) continuity of care; 8) integration of service; 9) early identification and intervention efforts to preempt crises;¹¹ and 10) sufficient funding.¹²

B. Community Re-entry Planning: Select Standards & Best Practices

Re-entry or transition planning services are often essential for individuals with psychiatric disabilities to be successful and remain in the community after release from prison or jail.¹³ As with diversion, there are many different re-entry program models.¹⁴

Whatever the model, key evidence-based components to effective re-entry planning for individuals with psychiatric disabilities in jails and prisons include: 1) benefits planning;¹⁵ 2) linkages to community providers;¹⁶ 3) “no reject policies” for community services;¹⁷ 4) case management;¹⁸ 5) available, affordable

⁹ Henry J. Steadman et al., The Diversion of Mentally Ill Persons from Jails to Community-based Services: A Profile of Programs, 85 Am. J. Public Health 1630, 1631-34 (1995) available at: <http://www.ncbi.nlm.nih.gov/pmc/1615738/pdf/amjph00450-0032.pdf> (last visited Aug. 18, 2013); see also Critical Issues-Jail Diversion Programs: Building Bridges Between Mental Health and Criminal Justice: Strategies for Building Community Partnerships, University of Maryland, available at: <http://www.umaryland.edu/behavioraljustice/issues/jaildiversion/building.html> (last visited August 21, 2013) and SAMHSA’s GAINS Center, What is Jail Diversion, supra n. 4.; Nat’l Ass’n of Mental Health Planning Councils, Jail Diversion: Strategies for Persons with Serious Mental Illness, a Guide for Mental Health Planning and Advisory Councils, available at: <http://www.namhpac.org/PDFs/01/jaildiversion.pdf> (last visited August 26, 2013).

¹⁰ Steadman, et al., supra note 9.

¹¹ Id; Judge David L. Bazelon Center for Mental Health Law, Asking Why: Reasserting the Role of Community Mental Health: A Report on the Performance Improvement Project in Five States, (2011) (“Asking Why”) available at: <http://www.bazelon.org/LinkClick.aspx?fileticket=VFwb7PPm7K0%3d&tabid=104> (last visited Aug. 26, 2013).

¹² Steadman, et al., supra note 7; “Asking Why,” supra note 11.

¹³ Fred Osher, et al, A Best Practice Approach to Community Reentry from Jails for Inmates with Co-Occurring Disorders: The APIC Model, 49 Crime & Delinquency 79 (2003) available at: http://www.caction.org/rrt_new/professionals/articles/OSHER%20ET%20AL.-REENTRY%20FROM%20JAILS.pdf (last visited August 26, 2013).

¹⁴ See *id.*

¹⁵ Judge David L. Bazelon Center for Mental Health Law, Creating New Options : Training for Corrections Administrators and Staff on Access to Federal Benefits for People with Mental Illness Leaving Jail or Prison (2006) available at: <http://www.bazelon.org/LinkClick.aspx?fileticket=b7UagW8enCw%3D&tabid=104> (last visited August 22, 2013).

¹⁶ American Ass’n of Community Psychiatrists, Position Statement on Persons with Mental Illness Behind Bars (2001), available at: http://www.communitypsychiatry.org/publications/position_statements/mibb.aspx (last visited Aug. 26, 2013).

¹⁷ *Id.*

supportive, and supervised housing;¹⁹ 6) accessible and non-discriminatory services;²⁰ and 7) adequate funding.

A bibliography of select sources of diversion and re-entry standards, best practices and resources appears at the end of this Q&A. These resources are mostly in addition to the materials noted in the footnotes.

III. CONCLUSION

Advocates should look to the standards to advocate for the development and funding of appropriate community services to keep people with psychiatric disabilities from going to jail and to help those already incarcerated to successfully return to and remain in the community. In addition, advocates should take steps to ensure that there is sufficient and sustained funding for these services in order to achieve lasting systemic reform.

BIBLIOGRAPHY

Jail Diversion:

These resources will be helpful to evaluating the appropriateness of jail diversion programs:

Am. Bar Ass'n, Criminal Justice Standards Pretrial Release (Third Ed., 2002)²¹

John Clark, Non-specialty First Appearance Court Models for Diverting Persons with Mental Illness: Alternatives to Mental Health Courts_(Feb. 2004)²²

Mental Health America, Position Statement 52: In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System²³

National Ass'n of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Diversion/Intervention (2008)²⁴

Also, a comprehensive list of other jail diversion resources is set forth on the GAINS Center website at

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Available at: <http://pretrial.org/Docs/Documents/ABA%20Standards%202002.pdf> (last visited August 22, 2013).

²² Available at http://gainscenter.samhsa.gov/pdfs/jail_diversion/pre_trial_nocover.pdf (last visited August: 22, 2013).

²³ Available at <http://www.mentalhealthamerica.net/go/position-statements/52> (last visited August 2013).

²⁴ Available at: http://www.napsa.org/publications/diversion_intervention_standards_2008.pdf (last visited at August 22, 2013).

http://gainscenter.samhsa.gov/topical_resources/jail.asp

Re-Entry Standards, Best Practices & Resources:

These resources address re-entry programs:

Am. Bar Ass'n, Criminal Justice Mental Health Standards (2010)²⁵

Am. Correctional Ass'n, A Manual of Correctional Standards²⁶

Am. Correctional Ass'n & Comm'n on Accreditation for Corrections Foundation/Core Standards for Adult Local Detention Facilities (2000)

Am. Correctional Ass'n & Comm'n on Accreditation for Corrections, Standards for Adult Correctional Institution, (2003)

Am. Psychiatric Ass'n, Guidelines for Psychiatric Services in Jails and Prisons, in Psychiatric Services in Jails and Prisons, Task Force Report 29 (2nd ed. 2000)

Am. Psychological Ass'n, General Guidelines for Providers of Psychological Services (1987)²⁷

Am. Pub. Health Ass'n, Standards for Health Servs. in Correctional Institutions, (3rd ed. 2003).

Ass'n of State Correctional Administrators, Policy Guidelines: Health Services, reprinted in Medical Care of Prisoners and Detainees, Symposium 16 (1973)

Committee of Ministers on the Council of Europe, The European Prison Rules (2006)²⁸

Steven K. Hoge, et al., Outpatient Services for the Mentally Ill Involved in the Criminal Justice System: A Report of the Task Force on Outpatient Forensic Services, Am. Psychiatric Ass'n (2009)²⁹

²⁵ Available at:

http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html (last visited Aug. 5, 2013).

²⁶ Ch.26, § 14, *reprinted in* Medical Care of Prisoners and Detainees (Ciba Found. Symposium 16 (1973), published by Wiley Online Library, available At: <http://onlinelibrary.wiley.com/doi/10.1002/9780470719992.app4/pdf> (last visited August 6, 2013.)

²⁷ 42 American Psychologist 712 (1987) available at http://gsappweb.rutgers.edu/cstudents/comps/GenComps/Gen4-2_apa_general.pdf (last visited August 22, 2013).

²⁸ Available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747> (last visited Aug. 6, 2013). 103.6).

Inter'l Ass'n for Correctional and Forensic Psychology, Standards for Psychology Services in Jails, Prisons, Correctional Facilities and Agencies³⁰

Joint Comm'n on Accreditation of Healthcare Orgs, (JCAHO) 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services § FC at 61, JCAHO 1 (1993) (forensic)

Judge David L. Bazelon Center for Mental Health Law , Issue Brief: Best Practices: Access to Benefits for Prisoners with Mental Illness³¹

Nat'l Comm'n on Correctional Health Care, Position Statement: Mental Health Services in Correctional Settings (1992).

Nat'l Comm'n on Correctional Health Care, Standards for Health Services in Prisons (2008).

United Nations, Convention on the Rights of Persons with Disabilities (CRPD)³²

United Nations, Standard Minimum Rules for the Treatment of Prisoners: Resolution of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders³³

United Nations Office on Drugs and Crime, Handbook on Prisoners with Special Needs (2009)³⁴

World Health Org., Health in Prisons: A WHO Guide to the Essentials in Prison

²⁹ Follow link at: <http://www.psych.org/learn/library--archives/task-force-reports> (last visited August 22, 2013).

³⁰ 37 Crim. Just. & Behav. 81 (2010).

³¹ Available at: http://www.prainc.com/soar/library/pdfs/Issue%20Briefs/DOC_BestPractices.pdf (last visited August 22, 2013).

³² Several articles of the CRPD are useful in supporting the argument that individuals with psychiatric disabilities should receive discharge/reentry planning and services when leaving jails and prisons including: Article 3-General Purpose: "full and effective participation and inclusion in society," independence, non-discrimination; Article 5-Equality and Non-Discrimination; Article 19-Living Independently and Being Included in the Community; Article 25-Health; Article 26-Habilitation and Rehabilitation; Article 27 - Work and Employment; and Article 28 - Adequate standard of living and social protection. The United States has not ratified the CRPD.

³³ E.S.C. Res. 663C, U.N. ESCOR, 24th Sess., Supp. No. 1, at 11, U.N. Doc. A/CONF/611 (1955), amended by E.S.C. Res. 2076, U.N. ESCOR, 62d Sess., Supp. No. 1, at 35, U.N. Doc. E/5988 (1977). These are still in effect but to the extent that they conflict with the CRPD with Disabilities, they are superseded. Additionally, the UN has recently convened a group of experts to work on revising these standards to make them more consistent with modern practices to the extent that they are out of date.

³⁴ Available at <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf> (last visited Aug. 5, 2013).

Health³⁵

³⁵ The World Health Organization (WHO) at 141-43 (2007) available at: http://www.euro.who.int/_data/assets/pdf_file/0009/99018/E90174.pdf (last visited Aug 5, 2013).