

AN OUTLINE TO IMPROVE THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO MENTAL ILLNESS

POTENTIAL SOLUTIONS AT EACH STEP OF THE PROCESS

“In the 1830’s Dorothea Dix revolutionized the care of people with mental illness by taking them out of jails and caring for them in asylums, later known as state hospitals. In the last 50 years, we have reversed this trend, resulting in a 90 percent reduction in public hospital beds for people with serious mental illness.”¹ This trend has had significant consequences. For instance when individuals with serious mental illness require hospitalization, they are left with precious few options: “[s]ome patients are housed in emergency room holding areas; some return home, where family and friends struggle to provide care; and some—at considerable risk to themselves—become homeless.”² The only other option appears to be jail. “Jails across the country have become vast warehouses made up primarily of people too poor to post bail or too ill with mental health or drug problems to adequately care for themselves.”³ In effect and practice, “jails and prisons have become the de facto mental hospitals” of our society.⁴

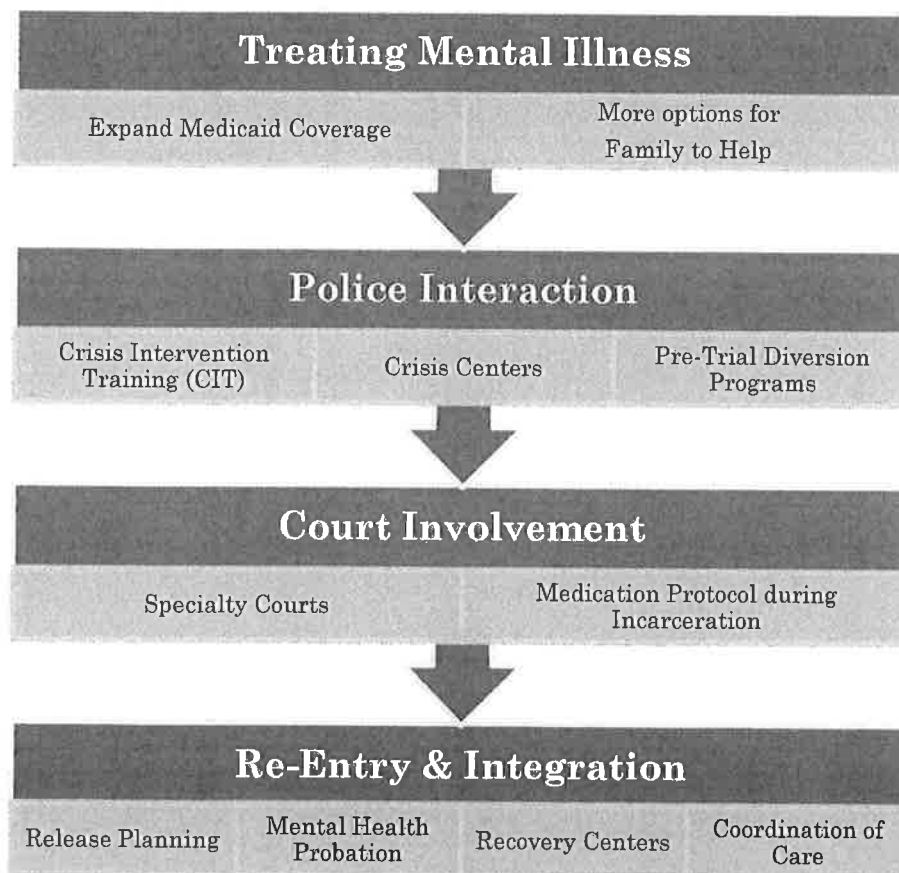
Mental health is a major issue affecting the United States and Idaho. As of 2005, “more than half of all prison and jail inmates had a mental health problem,” totaling some 1,264,300 individuals.⁵ More recent surveys show that “the individuals being incarcerated have more severe types of mental illness, including psychotic disorders and major mood disorders[,] than in the past.”⁶ To put this in perspective, “there are now 10 times more people with serious mental illness in state prisons (207,000) and county jails (149,000) than there are in state mental hospitals (35,000).⁷ “In 44 of the 50 states, the largest single ‘mental institution’ is a prison or jail.”⁸

The situation in Idaho is just as bleak. The two state psychiatric hospitals can house a total of 145 mental health patients.⁹ If national trends are any indication, the “Ada County Jail in Boise (838 inmates) and the state prison in

Kuna (1,653 inmates) probably [each] hold more individuals with serious mental illness than the two hospitals combined.”¹⁰

Still, there are solutions that can help improve the situation and do more to help the mentally ill. This is the first in a series of papers that will introduce some specific, measureable, and achievable ideas for Idaho to consider implementing. Mental health is not the concern of a few individuals or families; it is and ought to be society’s concern. As Pearl S. Buck wrote: “the test of a civilization is the way that it cares for its helpless members.”¹¹

The graphic below illustrates the overall outline of suggestions proposed in this series. In order to understand the ideas suggested in this series, it is necessary to understand the outline itself. First, the steps of the justice system’s process need some explanation and definition. Then, suggested solutions at each step are given a thumbnail sketch so that the whole outline makes some sense as a cohesive set of solutions to a significant societal problem.



I. STEPS OF THE CRIMINAL JUSTICE SYSTEM'S PROCESS

A. Treating Mental Illness

This step is everything that happens before any incident. The police are not involved. An individual may know that he or she is suffering from a mental illness. Frequently, the person's family begins to suspect a mental illness as they see their loved one behave erratically, make irrational decisions, or exhibit other symptoms of mental illness.

B. Police Interaction

Once an incident has occurred and the police have been called, the criminal justice system becomes involved. There is often reluctance to call the police because incidents with the mentally ill frequently involve close friends and family – the exact people who do not want to get their loved one “in trouble” with the law. For that same reason, cases can “disappear” as witnesses become unwilling to cooperate with the police and prosecutors. This step therefore includes the police who respond to an incident, those at the scene, and (to some extent) the prosecutors involved in the case.

C. Court Involvement

Once a Court is involved, the dynamics change substantially. Courts, trials, jails, and prisons all have various ways of providing mental health treatment. This stage involves the Court itself, the prosecution, the defense attorney, the jail, and also the Department of Correction.

D. Re-Entry & Integration

Lastly, an individual is released into the community. This may be because the sentence is served, probation is granted, or the individual is paroled. This stage involves those who take part in getting the individual back into the community and transitioning to normal life.

II. POTENTIAL SOLUTIONS AT EACH STEP OF THE PROCESS

A. Treating Mental Illness

1. *Expand Medicaid Coverage*

As the old adage goes: “an ounce of prevention is worth a pound of cure.” Before a mentally ill individual has to become entangled with the criminal justice system, the best solution is to provide treatment. Mental illness does not require imprisonment. Nor should someone have to be involved in the criminal justice system in order to receive treatment. Unfortunately, without some means of paying for treatment, the mentally ill frequently are unable to access care. The most effective means of addressing mental illness is in the community – both in terms of efficacy in helping the individual and in terms of an efficient use of public funds.

2. *More Options for Family to Help*

Frequently, family and close friends know someone needs help before anyone else and perhaps even before the individual him- or herself. Before there is any involvement with police, the ability of family to get the mental health treatment that their loved one needs can save everyone involved from the trouble, heartache, and costs associated with the criminal justice system.¹² Any option for loved ones must, of course, continue to balance the individual’s rights against the individual’s need for treatment.¹³

B. Police Interaction

1. *Crisis Intervention Team (CIT) Training*

There are times when police must interact with the mentally ill. Officer safety is paramount, but the standard procedures that ensure officer safety frequently exacerbate the problems underlying the behavior of someone who needs mental health treatment. Crisis Intervention Team (CIT) Training provides officers with a different set of skills that are helpful in interacting with the mentally ill.¹⁴ CIT Training keeps the officer safe, informs the officer of mental health issues, and helps the officer de-escalate a situation in order to keep everyone safe and

uninjured. It also results in far fewer mentally ill individuals entering the criminal justice system at the outset.

2. Crisis Centers

Crisis Centers provide a place, other than jail, for police to take individuals they suspect may need mental health treatment.¹⁵ Jail is a difficult place to be for everyone, but it presents an especially challenging experience for the mentally ill. A Crisis Center is a place where they can receive treatment, which will be better because it will be in a therapeutic setting and more cheaply administered than in a jail. It also allows the police to get help for the mentally ill, while still allowing the police to get back to their regular duties. Having a place available that is specially designed to deal with the mentally ill is more humane, cost-effective, and efficient than incarceration. Hospitals have generalized procedures and (usually) long wait times for mental health patients. A Crisis Center is specifically tailored to address a mental health crisis – making a Crisis Center more cost-effective location for treating mental health crises. For instance, a recent report from the Idaho Department of Health and Welfare report shows \$38,223 in emergency room savings in just the first two months of operating Idaho's first, and so far only, Crisis Center (located Idaho Falls).¹⁶ It can also be the first link in a program of long-term treatment that can address mental illness, lessen demand for hospital resources, and decrease the necessity of future police interaction.

3. Pre-Trial Diversion Programs

The law has long recognized that it is unjust to punish someone without the requisite mental capacity. Providing options for the mentally ill can begin even before trial. They can be diverted away from trial and jail, and public resources could instead be used to stabilize individuals, diagnose illnesses, provide treatment, and maintain mental health. Obtaining mental health treatment is simpler, faster, and cheaper if the patient is not in jail.¹⁷

C. Court Involvement

1. *Specialty Courts*

Mental Health Courts are one of several specialty courts already gaining traction in Idaho. Though they are few in number and small in size, they are succeeding.¹⁸ Once the Courts are involved with an individual who has a mental health issue, Mental Health Court is often the best place for him or her. Mental Health Court allows an Assertive Community Treatment (ACT) Team of mental health providers, medical professionals, and vocational rehabilitation specialists to work together with a judge, defense attorney, prosecutor and probation officer to oversee progress, manage incentives, and ensure that the individual stays on track toward a productive life. Expanding the reach and capabilities of Mental Health Courts will positively impact hundreds or thousands of lives in Idaho.

2. *Medication Protocol during incarceration*

If incarceration is necessary, for whatever reason, the jail officials are typically not in touch with the defendant's community mental health provider. Jails also face vastly different considerations than mental health providers. The administration of medication is a difficult task that implicates medical, legal, administrative, and custodial considerations. Imagine being treated for a severe mental illness, only to have that treatment interrupted or changed by incarceration – when one likely needs stability and medication the most. Having a single, state-wide protocol for the administration of medication (especially psychotropic medication) that is consistent in every county in Idaho will hopefully remove these interruptions and smooth whatever proceedings follow, whether that is long-term treatment, court proceedings, or even continued incarceration. Establishing clear guidelines of what medications can be used when and by whom will provide better information to jailers and a more seamless transition for the mentally ill in the criminal justice system.

D. Re-Entry & Integration

1. Release Planning

Every success is founded on a plan. The same is especially true of those with mental health issues. Having a written plan for psychiatric follow-up will increase an inmate's chances of obtaining follow-up mental health treatment after release. Having such a plan should be required of mentally ill inmates. Not only does having such a plan inform the inmate of where to go for help, it also serves to coordinate mental health resources available in the community, and ultimately to avoid future crises and incidents.

2. Mental Health Probation

Mental Health Probation is essentially the same as Assisted Outpatient Treatment (AOT). It is court-ordered outpatient treatment that provides an alternative to incarceration. While already possible in Idaho, the available options are frequently under-funded and difficult to utilize. Mental Health Probation or AOT provides a setting where an individual is required to obtain treatment (which allows a court to track and enforce its orders as necessary) while providing the skills for the individual to lead a productive life (eventually free from supervision). Mental Health Probation or AOT can include elements such as: peer support, recovery coaching, coordination with a mental health care provider (see below), and other ideas that can address each individual's needs.

3. Recovery Centers

Recovery Centers are open, more or less, during normal business hours to help individuals connect with treatment providers in the community and obtain skills necessary to become self-sufficient. Recovery Centers are a tool that can be used in tandem with Mental Health Probation or AOT to great effect. Where probation provides oversight and individual accountability, Recovery Centers supply the skills needed by individuals to succeed. Recovery Centers are part of an effort aimed at long-term recovery, where individuals can learn how to successfully function without probation or the court system monitoring.

4. *Coordination of Care*

Just like jails and community mental health providers, a similar disconnect can exist between the Department of Correction (DOC) and community mental health providers. Long-term solutions do not simply fall together by chance. They require planning and coordination. If the DOC and the defendant's community mental health provider could work together, the defendant would face a comprehensive approach without contradictory requirements and differing goals.

III. CONCLUSION

In sum, mental health is a significant issue facing the criminal justice system. These eleven suggestions hopefully provide a framework for improving the situation in Idaho. Each will be described in more detail in successive papers. The point of this series is to provide specific, measurable, and achievable ideas to improve the way Idaho, and especially the criminal justice system, treats the mentally ill that are effective and efficient.

¹ Thomas Insel, NIMH Director's Blog: *A Misfortune Not a Crime*, NATIONAL INSTITUTE OF MENTAL HEALTH (April 11, 2014), <http://www.nimh.nih.gov/about/director/2014/a-misfortune-not-a-crime.shtml>.

² *Id.*

³ Timothy Williams, *Jails Have Become Warehouses for the Poor, Ill and Addicted, a Report Says*, NEW YORK TIMES, p. A19 (February 11, 2015).

⁴ *Id.*

⁵ Doris S. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, BUREAU OF JUSTICE STATISTICS, p. 1 (Special Report, September 2006).

⁶ Dean Aufderheide, *Mental Illness in America's Jails and Prisons: Toward a Public Safety/Public Health Model*, HEALTH AFFAIRS (April 1, 2014), <http://healthaffairs.org/blog/2014/04/01/mental-illness-in-americas-jails-and-prisons-toward-a-public-safetypublic-health-model/>.

⁷ Insel, *supra* note 1.

⁸ *Id.*

⁹ IDAHO DEPT. OF HEALTH AND WELFARE, *About Idaho's State Hospitals*, <http://www.healthandwelfare.idaho.gov/medical/mentalhealth/statehospitals/tabid/495/default.aspx> (last visited November 24, 2014).

¹⁰ THE TREATMENT ADVOCACY CENTER, *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey* (2014), <http://www.tacreports.org/treatment-behind-bars> (last visited November 24, 2014); see also Audrey Dutton, *In Crisis: Courts and jails double as mental health providers*.

IDAHO STATESMAN (October 30, 2014), http://www.idahostatesman.com/2014/10/30/3456444_courts-and-jails-double-as-mental.html?rh=1.

¹¹ Pearl S. Buck, *MY SEVERAL WORLDS* (1954)

¹² Presently, involuntary commitment can only begin if (1) the person is in the hospital already and a medical professional determines that the individual “is gravely disable due to mental illness” or “poses an imminent danger to that person or others,” (2) when a law enforcement officer makes a similar determination, or (3) a loved one applies after the individual has been evaluated by a mental health examiner. I.C. §§ 66-326 & 66-329.

¹³ In Idaho, a neutral judge balances those sometimes conflicting interests within some strict time limits to avoid any unnecessary delay. I.C. §§ 66-326 & 66-329.

¹⁴ See Horace A. Ellis, *Effects of a Crisis Intervention Team (CIT) Training Program Upon Police Officers Before and After Crisis Intervention Team Training*, ARCHIVES OF PSYCHIATRIC NURSING, vol. 28, pp. 10-16 (2014) (showing that police officers’ knowledge, perceptions, and attitudes about mental health significantly improved after CIT Training).

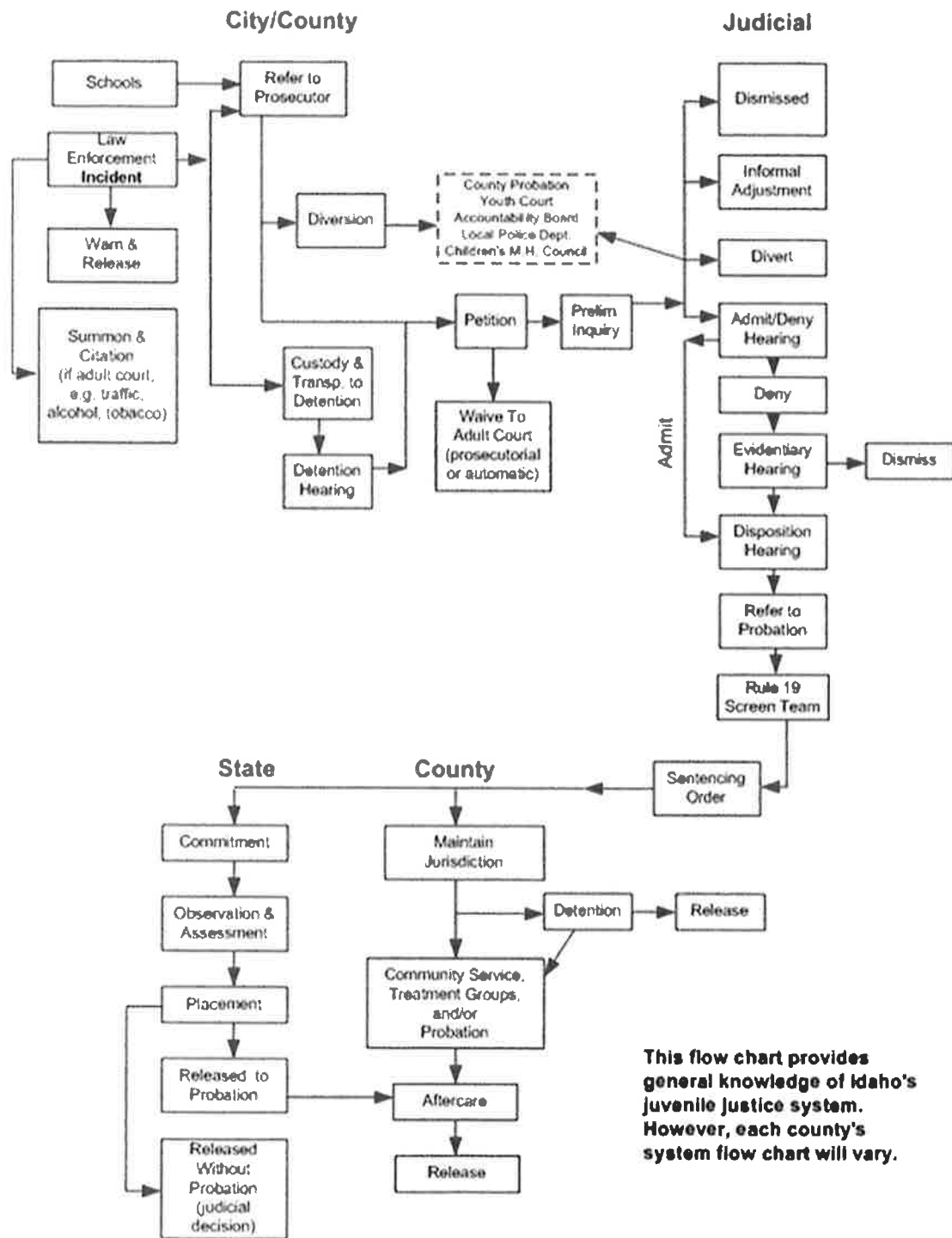
¹⁵ See Ali Tadayon, *Crisis center to open Dec. 4 in Idaho Falls*, IDAHO STATESMAN (November 23, 2014), <http://www.idahostatesman.com/2014/11/23/3503144/crisis-center-to-open-dec-4-in.html>.

¹⁶ DIVISION OF BEHAVIORAL HEALTH OF THE IDAHO DEPT. OF HEALTH AND WELFARE, *Crisis Center Update* (February 2015).

¹⁷ See Williams, *supra* note 3 (noting that “seeking mental health services sometimes meant longer stints in jail, . . . [i]n Los Angeles, those seeking help spent more than twice as much time in custody than did others — 43 days, compared with 18 days”).

¹⁸ See Keith Cousins, *Mental Health Court celebrates 10 years*, COEUR D’ALENE PRESS (November 7, 2014), http://www.cdapress.com/news/local_news/article_73776c53-747b-5eff-88c6-af85b40136f5.html.

General Flow Chart of Idaho's Juvenile Justice Process



This flow chart provides general knowledge of Idaho's juvenile justice system. However, each county's system flow chart will vary.