

Legislative Approaches

The *Criminal Justice/Mental Health Consensus Project* is an unprecedented national effort, coordinated by the Council of State Governments (CSG), to improve the response to people with mental illness who are involved with, or at risk of involvement with, the criminal justice system.

At the urging of law enforcement, corrections administrators, leaders in the mental health community, and state budget officials, Republican and Democratic state legislators alike across the country are tackling the complex but pressing issue of people with mental illness in the criminal justice system. Although solutions to this problem do not necessarily require new laws, bipartisan legislative action can facilitate cross-system collaboration or spur the development of creative programs and policies. The statutes described here illustrate some legislatures' approaches to addressing the overrepresentation of people with mental illness in the criminal justice system.



Representatives of the *Consensus Project* testified before the U.S. Senate Judiciary Committee on June 11, 2002.

PLEASE NOTE:

CSG has not conducted an empirical investigation of the effects of the statutes described below.

These statutes do not necessarily reflect the views of CSG members, CSG does not promote any of these statutes as a model, nor has CSG conducted a comprehensive review of all related state legislation in this area. There may be states not identified in this document that have legislation related to the issues discussed below. Furthermore, as the policy statements and recommendations in the *Criminal Justice/Mental Health Consensus Project* Report reflect, improving the response to people with mental illness involved in the criminal justice system does not always require legislative action, but can be realized through policy and programmatic changes, often at the local level. One resource for communities addressing this issue is the Technical Assistance and Policy Analysis (TAPA) Center: A Branch of the National GAINS Center funded by the Substance Abuse Mental Health Services Administration (www.tapacenter.org).

Improving Interagency Collaboration

Addressing the many needs of people with mental illness who are involved with, or are at risk of becoming involved with, the criminal justice system frequently requires the collaborative efforts of multiple agencies. The failure of these systems to work together effectively endangers lives, wastes money, and threatens public safety – frustrating crime victims, consumers, family members, and communities in general. State task forces or commissions are one approach to convene key stakeholders – including law enforcement, courts, corrections officials, mental health and substance abuse treatment providers, crime victims, consumers, and family members – to develop cooperative responses.

Example: Texas — § Ch. 614

Establishes the Texas Council on Offenders with Mental Impairments, composed of 30 members, including designees from the departments of mental health, criminal justice, juvenile justice, and substance abuse, as well as prosecutors, county jail officials, and mental health advocates. Directs the council to establish several pilot programs, and empowers the council to oversee the identification and treatment of all offenders with mental impairments in the state criminal justice system, to evaluate existing programs for this population, and to collect and disseminate relevant information across the state. Also requires memoranda of understanding between the departments of criminal justice, mental health, local mental health authorities, and local corrections and community corrections departments on how to ensure continuity of care for offenders with mental illness.

States with Related Legislation: CA, CO, FL, KY, IL, ME, MN, RI, UT, VA

Transition Planning

People with mental illness who are released from prison or jail without a comprehensive plan for treatment, housing, and other services, and without a sufficient supply of medications, are unlikely to have a safe and successful return to the community. Extremely high recidivism rates for this population are evidence of the need for significantly improved transition planning.

Example: Washington — Rev. Code. § 72.09.370

Requires the identification of inmates in state prison who “are reasonably believed to be dangerous to themselves or others and have a mental disorder.” These inmates are assigned a team of representatives from corrections, community corrections, local and state mental health, and other service agencies. The team works with each offender to develop and implement a comprehensive transition plan.

States with Related Legislation: CA, CO, DE, FL, IL, KS, ME, NE, WA

Any action that a legislator recommends to reduce the overrepresentation of people with mental illness in the criminal justice system needs to take into account the unique organization of that state's criminal justice and mental health system; there is no national, one-size-fits-all response to this problem. Still, few arguments in a legislature are as persuasive as the observation that another state legislature has already taken successful, bipartisan action on this issue.”

— Assemblywoman Sheila Leslie (D-NV)

Whether it's the sheriff, corrections officers, judges, family members, mental health providers, or the editorial page of the local newspaper, everyone seems to be telling us the same thing: too many people with mental illness are involved in the criminal justice system; we have to improve the response to this population.”

— Senator Norma Anderson, Majority Leader (R-CO)

“There are actions that a legislator can take, without spending additional funds, to increase public safety by improving the response to offenders with mental illness. Some wonderful progress can occur by simply changing a law or initiating a dialogue with mental health and corrections officials.”

— A.T. Wall
Director, Rhode Island
Department of Corrections



Screening for Mental Illness

Few if any states have comprehensive data regarding the number of people with mental illness who have been charged with a crime or incarcerated. Most, if not all, jails, prisons, and courts have systems for determining whether a person has a mental illness, but these vary within and among states, and many do not produce accurate results. Without knowledge of a person's mental illness, it is almost impossible for the criminal justice system to make treatment available, which jeopardizes the safety of the individual, criminal justice personnel, and other detainees or inmates. In addition, without a consistent approach for identifying detainees and prisoners with mental illness, the ability of court and corrections administrators to understand the mental health needs of their agencies is severely limited.

Example: Colorado — Rev. Stat. § 16-11.9-101 et seq.

Requires the development of a standardized procedure to screen for mental illness in the adult criminal justice and the juvenile justice system. The standardized procedure would be used by law enforcement, courts, and corrections agencies across the state. The statute also requires consideration of confidentiality issues and development of procedures to refer individuals for further assessment if they screen positive for possible mental illness.

States with Related Legislation: MI, NJ, OK, TX

Maximizing Options Available to Court and Jail Officials

Many of the individuals with mental illness involved in the justice system are non-violent offenders who have committed misdemeanors or low-level felonies, such as public intoxication, trespassing, or disturbing the peace. Often, these offenses are manifestations of untreated mental illness. When these defendants appear before a court or are booked into a jail, officials need to be able to make informed decisions about the person's detention. They also need a range of options other than jail or unconditional release to the community.

Example: Michigan — Comp. Laws Sec. 801.55

Authorizes sheriffs and circuit, district, municipal, and recorder's court judges to use methods including the reduction of waiting time for prisoners awaiting psychiatric evaluations and the use of community mental health resources as alternatives to incarceration for appropriate individuals.

States with Related Legislation: AL, CA, CO, CT, LA, ME, MT, NY, TX

Coordinating Delivery of Mental Health Treatment in Prisons and Jails

Correctional facilities often expend unnecessary resources to obtain information about an offenders' health, including any psychiatric condition. Procedures that establish when and how this information can be shared enable speedy treatment, continuity of care, and an efficient allocation of resources. At the same time, treatment providers have legal and ethical obligations not to divulge clinical information without the recipient's consent. Information-sharing protocols, when crafted carefully, and with input from all parties involved, can balance these needs and

Example: Arizona — Rev. Stat. §§ 31-132 & 31-224

Requires that a prisoner's medical record file, including the prisoner's mental health file or a standardized medical record, be transmitted prior to—or at the same time as—the inmate's transfer between a county jail and a state department of corrections facility.

States with Related Legislation: CA, DC, GA, IL, IN, LA, MI, MN, NJ

Training for Criminal Justice and Mental Health System Personnel

Improving the response to people with mental illness in the justice system hinges, in part, on effective training. Criminal justice staff must understand how to respond to a person with mental illness, and mental health professionals must be familiar with the criminal justice system and its impact on their clients. Proper training can improve responses to people with mental illness at all stages in the criminal justice process, and facilitate collaboration across systems.

Example: Maine — 34-B M.R.S.A. § 1219

Instructs state officials to develop a plan to train state law enforcement personnel about serious mental illness and methods for evaluating, treating and managing persons with serious mental illness.