



Hogg Foundation
for Mental Health

ADVANCING RECOVERY AND WELLNESS IN TEXAS

National Litigation Trends

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NASMHPD/NASDDDS Legal Divisions Joint Meeting

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Consider the following:

- ❖ What big challenge do you see in your legal landscape?
- ❖ What do you hope to understand better by the end of this meeting?



National Litigation Trends:

FOUR KEY TRENDS IMPACTING LITIGATION

1. Forensic Bed Waitlists

- ❖ From 1955-2005, state hospital beds fell 95%.
- ❖ From 2008-2013, state hospital beds fell 9%.
- ❖ U.S. population increased 93.8% from 1955-2015
- ❖ Forensic expenditures as % of state hospital expenditures increased from 7.6% in FY1983 to 36% (+4.7% for sex offenders) in FY 2013.



The Harris County Jail...

“is the largest mental institution in the state”

– Brandi Grissom, Texas Tribune

Is “the state’s largest mental health facility”

– Emily DePrang, Texas Observer

Is “the largest mental health provider in Texas”

– Former Sheriff Adrian Garcia

“treats more individuals with mental health issues on a daily basis than our state’s 10 psychiatric hospitals combined”

– Former Sheriff Adrian Garcia and Police Chief Charles McClelland

Sequential Intercept Model

Use of the Sequential Intercept Model as an Approach to Decriminalization of People With Serious Mental Illness

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The Sequential Intercept Model provides a conceptual framework for communities to use when considering the interface between the criminal justice and mental health systems as they address concerns about criminalization of people with mental illness. The model envisions a series of points of interception at which an intervention can be made to prevent individuals from entering or penetrating deeper into the criminal justice system. Ideally, most people will be intercepted at early points, with decreasing numbers at each subsequent point. The interception points are law enforcement and emergency services; initial detention and initial hearings; jail, courts, forensic evaluations, and forensic commitments; reentry from jails, state prisons, and forensic hospitalization; and community corrections and community support. The model provides an organizing tool for a discussion of diversion and linkage alternatives and for systematically addressing criminalization. Using the model, a community can develop targeted strategies that evolve over time to increase diversion of people with mental illness from the criminal justice system and to link them with community treatment. (*Psychiatric Services* 57:544–549, 2006)

Over the past several years, Summit County (greater Akron), Ohio has been working to address the problem of overrepresentation, or “criminalization,” of people with mental illness in the local criminal justice system (1,2). As part of that effort, the Summit County Alcohol, Drug Addiction, and Mental

public health principles has emerged to address the interface between the criminal justice and mental health systems. We believe that this model—Sequential Intercept Model—can help other localities systematically develop initiatives to reduce the criminalization of people with mental illness in their community.

tem at a greater frequency than people in the same community without mental disorders (personal communication, Steadman H, Feb 23, 2001). Although the nature of mental illness makes it likely that people with symptomatic illness will have contact with law enforcement and the courts, the presence of mental illness should not result in unnecessary arrest or incarceration. People with mental illness who commit crimes with criminal intent that are unrelated to symptomatic mental illness should be held accountable for their actions, as anyone else would be. However, people with mental illness should not be arrested or incarcerated simply because of their mental disorder or lack of access to appropriate treatment—nor should such people be detained in jails or prisons longer than others simply because of their illness.

With both this ideal and current realities in mind, we envision a series of “points of interception” or opportunities for an intervention to prevent individuals with mental illness from entering or penetrating deeper into the

- Planning tool that emphasizes “intercept points” at which diversion can occur.
- Stresses early interception and collaboration to minimize penetration into the criminal justice system.
- Uses the *entire community* as a unit of analysis to address criminal justice and mental health problems.

Sequential Intercept Model

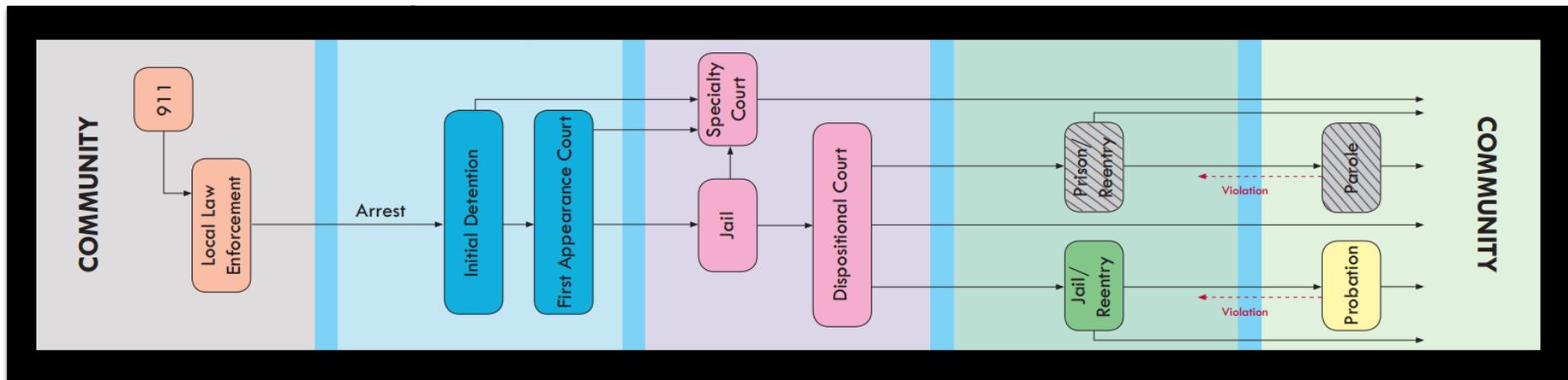
Intercept 1:
Law
enforcement

Intercept 2:
Initial
detention/court

Intercept 3:
Jails/courts

Intercept 4:
Reentry

Intercept 5:
Community
corrections



2. *Slow Olmstead* Implementation

“Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life.”

“Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

Olmstead v. L.C., 527 U.S. 581 (1999)

Individuals in Facilities Seeking Community Placement

- ❖ State IDD residential facilities
- ❖ State hospitals
- ❖ Nursing homes (PASRR)
- ❖ Money Follows the Person



Individuals in the Community at Risk of Unnecessary Institutionalization

- ❖ Seeking community supports
 - 1915c HCBS Medicaid Waivers
 - 1115 Demonstration Medicaid Waiver
- ❖ Housing
- ❖ Employment

3. Reliance on Restraint and Other Aversive Approaches

- ❖ Restraints vs. seclusion vs. emergency medication
- ❖ Recovery model moves from coercion to collaboration with a person-centered approach.
- ❖ Trauma-informed care looks at the root cause of behaviors.



Six Core Strategies



NATIONAL TECHNICAL ASSISTANCE CENTER

SIX CORE STRATEGIES[©] TO REDUCE THE USE OF SECLUSION AND RESTRAINT PLANNING TOOL

Draft, May 2005
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- ❖ Leadership toward organizational change
- ❖ Use of data to inform practice
- ❖ Workforce development
- ❖ Use of seclusion and restraint prevention tools
- ❖ Consumer roles in inpatient settings
- ❖ Debriefing techniques

4. Guardianship Reform



Jenny Hatch testifying
in Virginia

- ❖ Limited guardianship
- ❖ Power of attorney
- ❖ Representative payee
- ❖ Supported decisionmaking

A Wild Card: The Murphy Bill

H.R. 2646:
Helping Families
in Mental Health
Crisis Act





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Thanks for listening.

Please feel free to contact me at
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