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A WAY FORWARD:

Diverting People with Mental Illness from Inhumane and Expensive Jails into Community-Based Treatment that Works

A REPORT BY THE ACLU OF SOUTHERN CALIFORNIA AND THE BAZELON CENTER FOR MENTAL HEALTH LAW

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I. EXECUTIVE SUMMARY

Jails have become warehouses for people with mental illness. Nationwide, nearly half a million inmates with mental illness are in local jails, and an estimated 10-25% have a serious mental illness, such as schizophrenia.[1] In Los Angeles County alone, at least 3,200 inmates with a diagnosed severe mental illness crowd the jails on a typical day, which constitutes about 17% of the jail population.[2] These numbers capture only the number of inmates with a diagnosed severe mental illness: the actual number may well be higher.[3] Former Los Angeles County Sheriff Lee Baca has called L.A.'s jail system "the nation's largest mental hospital."[4]

The war on drugs and other law enforcement policies have resulted in mass incarceration of low-level drug and other non-violent offenders, many of whom are arrested for behaviors related to a mental illness.[5] In L.A., roughly 1,100 inmates with mental illness are behind bars on an average night for charges or convictions for nonviolent offenses.[6] And many of the behaviors that lead to such charges are rooted in mental illness.[7] According to the Vera Institute of Justice, drug offenses make up the largest portion of charges for this inmate population, nearly 27%.[8] "Mental illness frequently becomes de facto criminalized when those affected by it use illegal drugs, sometimes as a form of self-medication, or engage in behaviors that draw attention and police response."[9]

After drug crimes, status offenses, administrative offenses, and parole violations are the most common charges or convictions for which people with mental illness are held in L.A.'s jails.[10]

For those with mental illness, incarceration causes needless suffering and even death. Not only does the lack of adequate care in jails and prisons exacerbate the symptoms of mental illness, but also overcrowding and other conditions of confinement make it harder to successfully treat prisoners with mental illness.[11] Prisoners with mental illness are far more likely to suffer sexual and physical abuse at the hands of jail staff or other inmates than are inmates who do not have a mental illness.[12] The Los Angeles County jails have been rife with such abuse for decades. Incarceration can also imperil the very lives of those with mental illness: suicide is the leading cause of death in jails, and inmates with mental illness commit suicide at much higher rates than people with mental illness living in the community.[13] Indeed, the U.S. Department of Justice (DOJ) recently sent a letter to Los Angeles County stating that it had found that the County was violating the constitutional rights of inmates with mental illness, noting the ten suicides by inmates in 2013, and finding that the Sheriff's Department and Department of Mental Health had failed to take adequate steps to "protect prisoners from serious harm and risk of harm at the Jails due to inadequate suicide prevention practices."[14]

Prisoners with mental illness are far more likely to suffer sexual and physical abuse at the hands of jail staff or other inmates than are inmates who are not mentally ill. The L.A. County jails have been rife with such abuse for decades. Incarceration can also imperil the very lives of those with mental illness: suicide is the leading cause of death in jails, and inmates with mental illness commit suicide at much higher rates than people with mental illness living in the community.

Upon release, inmates with mental illness find it even more difficult to get a job and find housing than before their incarceration because they now have a criminal record. And families suffer when their loved ones are imprisoned.

Widespread incarceration of people with mental illness harms not only them and their families but also wastes precious taxpayer resources. It costs far more to incarcerate inmates with mental illness than those without mental illness,[15] and it is far less costly to supervise them in community settings than in jail.

Many communities are beginning to address the warehousing of people with mental illness in jails through collaborations between the criminal justice system and the public mental health system that "divert" people with mental illness from incarceration.[16] Effective diversion programs ensure that people with mental illness who are arrested or end up in jail are connected to effective community-based treatment programs. Diversion can occur at any stage of the criminal process, including pre-arrest, pre-and post-booking, pre-trial, and pre-sentencing. The key to success is relying on treatment services, including Assertive Community Treatment (ACT) and supportive housing, with demonstrated success in reducing recidivism (re-offending), improving mental health outcomes, and lowering costs.[17]

Diversion programs not only improve public safety and public health, but they are also consistent with the purpose of the Americans with Disabilities Act (ADA) and with the landmark decision in *Olmstead v. L.C.,* 527 U.S. 581 (1999), in which the U.S. Supreme Court affirmed that the ADA prohibits the needless institutionalization of people with mental disabilities. The DOJ has been actively promoting community-based services, especially ACT and supportive housing, as a means of preventing the needless institutionalization of people with mental illness in jails.[18]

Widespread incarceration of people with mental illness harms not only them and their families, but also wastes precious taxpayer resources. It costs far more to incarcerate inmates with mental illness than those without mental illness, and it is far less costly to supervise them in community settings than in jail.

The L.A. County Board of Supervisors recently voted to move forward with a plan that would cost nearly $2 billion, and would result in a massive retooling of the jails, even though the plan contains no guarantee of improved public safety, reduced recidivism, or improved public health outcomes. Until recently, County officials have been reluctant to review the way they address the needs of inmates with mental illness, or to consider diversion in cases involving low-level offenders.

Fortunately, District Attorney Jackie Lacey and the County Board of Supervisors have recently taken initial steps towards developing a diversion program in Los Angeles.[19] The District Attorney has publicly stated in reference to the way the criminal justice system deals with people with mental illness: "The current system is, simply put, unjust."[20] And she has convened a summit of stakeholders in the criminal justice system, including judges, prosecutors, public defenders, law enforcement, and advocates and service providers for people with mental illness to discuss how to dramatically alter the way the criminal justice system deals with people

with mental illness.[21] In its recent letter to the County about unconstitutional treatment of inmates with mental illness, DOJ encouraged the County's efforts to move away from incarceration and towards diversion stating: "The United States applauds the County's interest in increased community-based treatment and alternatives to incarceration for individuals with mental illness."[22]

This report is designed to support the efforts of the District Attorney and accelerate progress towards much needed reform. It explains how diversion programs in other municipalities have succeeded in linking offenders with community-based treatment and housing and thereby dramatically reduced both government spending and recidivism. It also sets forth recommendations for how the County and the stakeholders in the criminal justice system, including those with mental illness and their families, can work together to establish a program that would divert people with mental illness from its jails into community-based treatment. Los Angeles County can and should begin the process of establishing a diversion program that can improve public safety, reduce jail crowding and save money.

A. FINDINGS

I. An estimated 17% of inmates housed at Los Angeles County's jails have a serious mental illness. However, there are only enough dedicated beds in the jail's mental health units to house 12% of the jail population.
II. Los Angeles County spends about $10 million per year on psychiatric medication for inmates with mental illness.
III. Inmates with diagnosed mental illness on average spend far longer in jail than those without mental illness.
IV. Ninety-five percent of inmates with mental illness in Los Angeles County jails have offended before, and many cycle in and out of the jails.
V. Inmates with mental illness are disproportionately the targets of direct use of force by deputies. A third of all deputy-on-inmate use of force incidents in the jails involve individuals with mental illness.
VI. Inmates with mental illness are far more likely to suffer sexual and physical assault in jail, and commit suicide at elevated rates while incarcerated.
VII. Evidence-based programs like supportive housing and ACT have shown drastic drops in recidivism and significant improvements in mental health. These programs would also be less expensive for the County than warehousing people with mental illness in jails.

B. RECOMMENDATIONS FOR LOS ANGELES COUNTY

I. Consult with experts within the County and through national organizations like SAMHSA's GAINS Center operated by Policy Research Associates in New York,[23] and the Technical Assistance Collaborative in Boston.[24]
II. Develop a blueprint for a diversion program that: defines the target population for diversion; identifies the community-based services, including ACT and supportive housing, that will be offered and ensures they are available in sufficient quality and quantity; develops the processes by which candidates for diversion will be identified, assessed, and referred; and projects costs and savings.
III. Ensure that the blueprint has the support of law enforcement, prosecutors, judges, defense counsel, and the substance abuse and mental health systems.

II. REPORT

A. COMMUNITY-BASED TREATMENT PROGRAMS

For diversion programs to succeed, they must have access to community-based services that are effective for individuals with mental illness who end up arrested or in jail. Both ACT and supportive housing were designed with these individuals in mind. These services are highly successful in helping people with serious mental illness and co-occurring substance abuse become law-abiding and successful members of their communities, including those who have previously cycled in and out of jails and prisons.

ACT is provided by a multidisciplinary team with members from the fields of psychiatry, nursing, psychology, social work, substance abuse, vocational rehabilitation, and peer support. The team is available around the clock and provides a wide range of services in the home and other community settings. Services may include outreach, intensive case management, psychosocial rehabilitation, assistance with employment and housing, family support, education, substance abuse services, crisis services and medication management. ACT teams are mobile, providing services in individuals' homes and in other community settings in which individuals spend their time. ACT teams are trained to work with law enforcement personnel and to respond to people in psychiatric crisis who come into contact with the criminal justice system. ACT is a proven method of preventing psychiatric hospitalizations, emergency room visits, arrests, and incarceration. There are few limits on the services they can provide, allowing ACT teams to do "whatever it takes" to meet their clients' needs.

Supportive housing is a treatment intervention through which individuals are provided with their own apartment along with the services they need to be successful tenants and members of the community. Individuals in supportive housing have access to an array of services targeted to meet their individual needs. Often services are provided by an ACT team.[25] Supportive housing has proven to be very effective at helping individuals manage their mental illness while living in the community. "[S]tudies have found that persons with mental illness who experience housing instability are more likely to come in contact with the police and/or be charged with a criminal offense. Furthermore, there is new evidence that former prisoners returning to the community view housing as a key component—perhaps even the most important component—of successful community reintegration."[26] Indeed, "[t]he finding that homeless persons reduce their utilization of acute care services such as inpatient hospitalizations and jail stays subsequent to housing placement is nearly universal."[27]

Supportive housing can be created by leasing "scattered" existing units owned by private landlords, or by developing or rehabilitating purchased land or buildings. Scattered-site supportive housing is almost 50% less expensive than newly-built supportive housing, since there are no development or rehabilitation costs.[28]

Supported employment helps individuals with mental illness to find and retain work. Through supported employment, individuals with mental illness receive placement and ongoing support services including transportation. In addition to being therapeutic, supported employment enables individuals to earn money to support a household and their participation in community activities.

Pathways to Housing,[29] a well-studied and widely emulated provider of ACT and supportive housing, has shown that its services yield dramatic reductions in contact with law enforcement and impressive improvements in mental health.[30] In accepting clients, Pathways gives priority to individuals with a history of incarceration.[31] Pathways'

services have been shown to reduce incarceration by 50%, shelter use by 88%, hospitalization episodes by 71%, and crisis response episodes by 71%.[32] A video highlighting Pathways' successes features Helene, who used to sleep in a public bathroom before she became a Pathways client, and Irwin, who says Pathways allows him to "do the right things," including take his medications on time, attend doctor's appointments, and "take initiative" in his life.[33]

Like Pathways, the Nathaniel Project[34] uses ACT, supportive housing, and supportive employment to successfully transition individuals with mental illness from the New York City criminal justice system to community living. The Project serves individuals convicted of violent felonies as an alternative to incarceration.[35] The Project has demonstrated a "70 [%] reduction in the mean number of arrests in the two years following program admission compared to the two years before,"[36] and less than 3% of participants are arrested on violent charges once enrolled in the program.[37]

In Chicago, Thresholds' Justice Program,[38] which also uses ACT and supportive housing, provides transition services to people with serious mental illness entering the community from the Cook County Jail and two state prisons.[39] Prior to release, Thresholds connects inmates with community-based housing, physical and mental health treatment, and job assessments and placement.[40] Thresholds has demonstrated an 89% reduction in arrests, 86% reduction in jail time, and 76% reduction in hospitalizations among its participants.[41] Thresholds participants live independently, reconnect with family, work, go to school, and report decreased symptoms of mental illness and decreased substance use.[42]

The King County (Seattle) Forensic ACT program serves adults with serious mental illness who have extensive criminal histories. It "provides housing and intensive community-based recovery oriented services with the goal of reducing use of the criminal justice system, reducing use of inpatient psychiatric services, improving housing stability and promoting community tenure."[43] The program has resulted in a 45% reduction in jail and prison bookings among participants.[44] Participants also "significantly decreased their amount of time institutionalized as measured by combined days in jail, prison or inpatient psychiatric hospitals."[45] Evaluators report that stable housing contributed greatly to these reduced incarceration rates, as well as improvements in quality of life, and the ability to begin focusing on recovery:

> [H]ousing was perceived as making an extraordinary difference for [Forensic ACT] participants by all who contributed to the qualitative evaluation. Stakeholders spoke to noticing reduced incarcerations, the ability to address other issues, increased motivation to stay out of jail, and improved treatment compliance when participants were housed. Staff spoke to stability, increased medication compliance, ease of finding clients and helping them to meet their obligations and appointments, reductions in jail time, and improved physical and emotional health when clients were housed. Participants spoke to peace of mind, privacy, freedom, safety, and self-worth. All participants interviewed unanimously endorsed having their own place as very important to them.[46]

It is not necessary that all individuals participating in a diversion program receive ACT and supportive housing for a Los Angeles diversion program to succeed. ACT and supportive housing are highly intensive services designed for, and successful with, individuals most severely disabled by mental illness. Many individuals with mental illness could be successfully diverted from Los Angeles's jails with less intensive services, for example, intensive case management and recovery-oriented outpatient services.

Moreover, some individuals—those in acute psychiatric crisis—may require a short stay in a hospital or crisis program before they can be successfully served in the community.

Individual needs should dictate the mix of services.

B. BENEFITS OF DIVERSION: COST SAVINGS, LOWER RECIDIVISM RATES, BETTER HEALTH OUTCOMES

Why should Los Angeles divert those with mental illness out of jail and into community-based treatment programs? Because doing so will improve public safety by dramatically reducing the rate of future offenses; it will save money by cutting correctional costs and reducing the need for new jail facilities; and it will be far more effective at treating mental illness. It will also prevent those with mental illness from suffering physical and sexual abuse at the hands of deputies and other inmates while incarcerated. Simply put, diversion to community-based treatment programs is a best practice and is the right thing to do.

1. Jail is Not the Right Place to Treat People with Mental Illness

Jail is a horrific place for a person with mental illness. Nonetheless, our jails are bursting at the seams with people with mental illness, many charged with non-violent offenses. How did this happen? Inhumane, ineffective, and expensive mental institutions throughout the nation began shuttering in the 1950s, in a process called deinstitutionalization.[47] And the number of people housed in such institutions appropriately decreased, from nearly 560,000 in 1955 to roughly 70,000 in 1994.[48] But governments did not simultaneously take steps to ensure the availability of, and funding for, the community-based alternatives that experts have been recommending for decades. These more effective and less costly alternatives to institutionalization include ACT, supportive housing, and supportive employment.[49]

The lack of community mental health services, coupled with mass incarceration of non-violent offenders, has resulted in three jails – the Los Angeles County Jails, Rikers Island Correctional Facility in New York City, and Cook County Jail in Chicago – having the distinction of being the nation's largest psychiatric institutions. The results for people with mental illness have been devastating.

The lack of community mental health services, coupled with mass incarceration of non-violent offenders, has resulted in three jails —the Los Angeles County Jails, Rikers Island Correctional Facility in New York City, and Cook County Jail in Chicago—having the distinction of being the nation's largest psychiatric institutions.[50] The results for people with mental illness have been devastating.

"Two [prison] conditions are particularly associated with a serious degeneration of mental health: overcrowding and confinement in isolation units."[51] Indeed, scholars and mental health practitioners have suggested that the combination of adverse jail and prison conditions and the lack of adequate and effective treatment resources may result in some prisoners with preexisting mental health conditions suffering an exacerbation of symptoms and even some otherwise healthy prisoners developing mental illness during their incarceration.[52]

In L.A.'s Men's Central Jail, inmates with mental illness are "relegated to idleness in a cell and still lack adequate mental health treatment," according to Dr. Terry A. Kupers, a psychiatrist and expert on people with mental illness in the criminal justice system.[53] Conditions for inmates with mental illness in 2008, he wrote, were "eerily similar" to those in 1978, when he previously visited Men's Central Jail:

> …prisoners are rarely seen by psychiatrists or by mental health technicians…; prisoners are managed by deputy sheriffs who have no training in handling psychiatric patients; most of the prisoners receive no opportunity to exercise indoors or outdoors; most are locked alone in their one-man cells almost all the time, including meals…[54]

The treatment denials, idleness, and isolation that inmates with mental illness experience are a consequence in part of the overcrowding at L.A.'s jails, which is endemic.

Overcrowding also contributes to high rates of violence and suicide at the jails. "In addition to their often untreated illness, mentally ill prisoners are more likely than other prisoners to incur disciplinary infractions and suffer punishment as a result, and they are also more likely to be victimized, including sexual victimization, in the course of their confinement."[55] In 1997, DOJ found that inmates with mental illness in L.A.'s jails face "an unacceptably high risk of physical abuse and other mistreatment at the hands of other inmates and custody staff."[56] In 2008, Dr. Kupers similarly found that deputies used a disproportionate amount of force against inmates with mental illness.[57] Former Sheriff Baca corroborated Dr. Kupers' conclusion that force is disproportionately directed at inmates with mental illness. In January 2012, he told County Supervisors that one-third of the deputy-on-inmate use of force incidents involved inmates with mental illness, a rate far higher than the approximately 15% of inmates deemed mentally ill.[58]

Suicide among inmates with mental illness is also widespread. Inmates with mental illness commit suicide at a far greater rate than people with mental illness who are not incarcerated.[59] "[S]uicide remains the leading cause

of death in local jails and in the top five causes of deaths in state prisons (among cancer, heart disease, liver disease, and respiratory disease)."[60]

More than a decade ago, then-Sheriff Baca told the DOJ that he would overhaul the treatment of inmates with mental illness in L.A.'s jails.[61] But conditions remain woefully inadequate. In September 2013, DOJ announced that it was again investigating inadequate mental health care in L.A.'s jails and had launched a new inquiry into reports of excessive force.[62] "A growing number of prisoners with mental illness continue to be housed in obsolete and dilapidated conditions at Men's Central Jail, women [with mental illness] are routinely confined in 'lock down' status due to insufficient staffing, and capacity for inpatient mental health care remains insufficient," the DOJ wrote in a letter describing the investigation.[63]

When it issued a letter detailing the results of its findings, DOJ concluded that there had been a dramatic rise in the suicide rate, with ten inmates having killed themselves in the jails in 2013 and that the Sheriff's Department and Department of Mental Health had failed to put in place adequate suicide prevention policies.[64] DOJ also found, among other things, that the County was not providing inmates "with adequate mental health treatment in a consistent manner," and that "[l]iving conditions in general are deficient (dimly-lighted, vermin-infested, noisy, unsanitary, cramped and crowded) and create an environment that may contribute to prisoners' mental distress." [65]

Because "[t]he delivery of mental health services in the corrections environment is difficult and presents unique challenges,"[66] Dr. Kupers has concluded that decreasing the population of inmates with mental illness is essential to addressing the problems in L.A.'s jails. The United States DOJ agrees with this conclusion:

> The remedies [DOJ] seek[s] [for the inadequate treatment of inmates with mental illness] to ensure that conditions in the Jails meet the minimum required by the Constitution – that ensure that prisoners are safe and that the staff are not placed at unreasonable risk of harm – can be implemented more effectively if the number of prisoners needing mental health services is reduced.[67]

Unless the number of inmates with mental illness is reduced, there is little hope of successfully providing treatment in jail to those inmates who need to be incarcerated for public safety reasons.[68]

2. Community-based Treatment is Effective and Reduces Recidivism

Experts agree that community-based programs are more effective than jails at treating mental illness and that they reduce future offenses and costs.[69] California's Administrative Office of the Courts recognized the need for community-based services in its 2011 Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report, in which its first recommendation is instituting reforms that focus on "[c]ommunity-based services and early intervention strategies that reduce the number of individuals with mental illness who enter the criminal justice system."[70] The DOJ agrees: "Many of the prisoners [in the Los Angeles County Jails] may well be safely and more effectively served in community-based settings at a lower cost to the County."[71]

Recidivism rates among incarcerated inmates with mental illness are alarming. 95% of inmates with a mental illness in L.A.'s jails have offended before, according to one study.[72]

Diversion programs could dramatically improve these outcomes, curtailing future criminal justice costs.[73] Examples from around the country demonstrate how effective diversion can be. New York City's Nathaniel Project reports a 70% reduction in arrests over a two-year period among program participants.[74] Chicago's Thresholds program has shown an 89% reduction in arrests, an 86% reduction in jail time, and a 76% reduction in hospitalizations.[75] Participants in Seattle's FACT program "significantly decreased their amount of time institutionalized as measured by combined days in jail, prison or inpatient psychiatric hospitals,"[76] including a 45% reduction in jail and prison bookings.[77] Miami-Dade County's diversion program, which has access to ACT and supportive housing, has reduced recidivism among misdemeanants from 75% to 20% for program participants.[78] The felony diversion program is even more effective, with recidivism rates of merely 6%.[79] San Francisco has also achieved significant reductions in recidivism from diversion programs.[80] Eighteen months after beginning San Francisco's program, participants were 26% less likely to be charged with a new crime and 55% less likely to be charged with a new violent crime than similar individuals, according to a 2007 study.[81] A 2009 study on the same program reported an 84% drop in the likelihood of re-arrest for program graduates.[82]

3. Diversion to Community-based Treatment Saves Money

a. Diversion Reduces Jail Operating Expenses

Placing inmates with mental illness behind bars comes at a high price. In L.A., the daily cost of incarcerating inmates with mental illness is far higher than the cost of incarcerating inmates who do not have a mental illness. The average cost of jailing an inmate without mental illness or other significant medical needs is about $105 per day, or about $38,000 per year.[83] For inmates with mental illness, the cost rises to about $133 per day or $48,500 per year when including the cost of psychotropic medication and mental health treatment.[84] But the true cost is far greater still. Providing inpatient mental health care in the jail hospital, which cost more than $950 per day in 2006–07, significantly increases County spending on incarcerating people with mental illness.[85] A 2007 study of inmates with severe mental illness in Twin Towers found that 32% of them "required acute hospitalization in the jail inpatient unit."[86] If we factor in the costs of jail hospitalization, and if County officials were to improve the treatment of inmates with mental illness by adding mental health staff and taking other steps that DOJ is likely to require, the average daily cost will likely increase to $172.86, or $63,097.54 annually.[87]

Furthermore, inmates diagnosed with mental illness spend, on average, far longer in jail than those without mental illness, compounding the cost of incarceration.[88] The average length of stay for inmates receiving mental health services was nearly 43 days, more than twice the average length of stay (18 days) for those not receiving mental health services.[89] And, among inmates facing misdemeanor charges, those who received jail mental health services stayed three times longer on average (25 days) than those who did not receive mental health services (7.5 days).[90]

Moreover, the County receives no assistance from the federal government to pay for treatment in jail, including expensive psychotropic medications. Federal law bars the County from using Medi-Cal funds to treat jail inmates. The federal Affordable Care Act and Medi-Cal expansion will not change this bar to accessing federal funds: The County will not receive federal funding to pay for treatment in the jails even for inmates who are enrolled in, or are eligible for, Medi-Cal due to their low incomes.[91]

The cost of providing community-based treatment for people with mental illness is far less than the cost of incarceration. ACT and supportive housing are among the most intensive and most expensive interventions delivered by community mental health systems. But even combined they cost less than incarcerating an inmate with mental illness in an L.A. jail. According to California's Administrative Office of the Courts: "[T]he yearly cost

for an individual with mental illness in a supportive housing program in Los Angeles was $20,412."[92]

Many community-based organizations provide Full Service Partnership (FSP) services, which are similar to ACT, funded by the Los Angeles County Department of Mental Health. These services are specifically intended for people with mental illness and a long history of homelessness or involvement with the criminal justice system. Plus, these organizations enroll clients in benefit programs such as Medi-Cal and Social Security Disability, thus ensuring that 50% of the mental health services are paid for by the federal government.[93] The costs for FSPs for the average client are about $16,000 per year, or $43 per day. And, for an additional $5,000 a year these providers can arrange for or provide a wide range of additional services, such as employment and housing assistance.[94] This range of services is both far less expensive than housing and treating a person with serious mental illness in jail, and the federal government pays a significant share of the costs when the services are provided in the community, but not when provided to jail inmates.

In a 2009 study of the public costs of supportive housing compared to homelessness in L.A., including the costs of time spent in jail, the authors concluded that costs go down 79% for chronically homeless individuals with disabilities when they are placed in supportive housing.[95] 59% of the study population had been in jail in the previous five years, and for the most expensive cohort of the population, 35% of costs when homeless were for jails.[96] Included in the potential cost savings were expenses incurred by the Los Angeles County Probation Department, the Sheriff's Department's general jail facilities and services, and the Sheriff's Department's medical and mental health jail facilities and services.[97]

A 2013 study focused on high-need homeless patients admitted to Los Angeles hospitals found that for those who obtained housing, annual public and hospital costs per person decreased from $63,808 when homeless to $16,913 when housed (excluding housing subsidy costs), and total health care costs, including jail medical and mental health care, decreased 72%, from $58,962 to $16,474 per person.[98] And, the authors noted, "*Jail costs almost disappear when patients are living in permanent supportive housing*."[99]

Because of the high cost of incarceration, reducing both the frequency and length of jail stays of people with mental illness through diversion can generate substantial savings. In the last four years, Miami-Dade County has avoided nearly 13,000 jail bed days by diverting people with mental illness away from jails.[100] Orange County's mental health diversion programs, some of which employ ACT, have also avoided substantial jail costs. In 2012, Orange County's program saved nearly 5,000 jail bed days, saving the county nearly $580,000.[101] Despite running a very small diversion program, San Francisco's mental health court still resulted in a net savings of $277,100 by its third year, due to a reduction in criminal justice system costs, according to a 2009 report.[102]

b. Diversion Would Reduce Capital Expenses on Jail Construction

Reducing jail operating expenses is only one of the ways that diversion saves money. A diversion program would also allow the County to avoid part of the immense expense of building new jails. Los Angeles County Supervisors just approved moving forward on a jail plan with a projected construction cost of $1.744 billion for a "treatment" jail that would provide for 4,860 beds, with 3,260 of those for inmates with mental illness.[103] The cost per bed for this plan is $358,847.[104] Diverting defendants with mental illness to community treatment programs will reduce the need for new jail facilities of this size and scope, thereby saving the County enormous amounts in capital expenses, including interest payments on the bonds used to finance construction.

c. Diversion Saves the County Money by Shifting Costs to the Federal Government

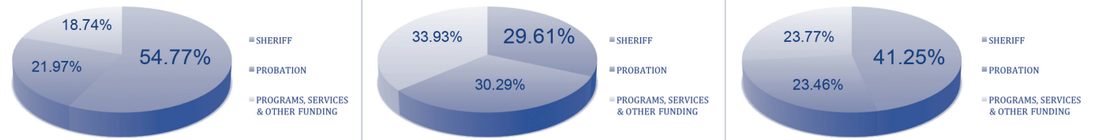
Diversion also reduces County costs by shifting costs onto the federal government. The County is not allowed to use Medi-Cal, 50% of which is funded by the federal government and the rest by the state and county government, to pay for treatment in jail.[105] By contrast, the County may use Medi-Cal funds to pay for community treatment. In addition, for the next three years, Medi-Cal spending for those individuals in the Medi-Cal expansion will be 100% reimbursed by the federal government, and then phased down to 90% by 2020.[106] Many of those in the Medi-Cal expansion will be single adults with mental illness.[107] With the expansion, Medi-Cal will cover the treatment costs for individuals who fall within 138% of the poverty line.[108]

In addition, the County is not allowed to use funds from the federal Supplemental Security Income program (SSI) to pay for room and board at the jail. However, people with mental illness in supportive housing typically use 30% of their SSI to pay for rent, making SSI a significant source of funding for this community service.[109]

Moreover, veterans with mental illness may be eligible for treatment funded through the federal Department of Veterans Affairs, and homeless veterans with mental illness are eligible to receive mental health care, housing, and substance abuse treatment through the Veterans Affairs Supportive Housing program. Like SSI, these federal resources cannot be used at the jail.

Miami-Dade County has been very effective in using federal dollars to support its diversion program. The County helps those in its diversion program apply for SSI, which is a gateway to Medicaid eligibility. Miami-Dade employs a strategy called SOAR (SSI/SSDI Outreach, Access and Recovery) that has high success rates: 92% of those who apply for benefits using SOAR have their initial application approved, compared to 37% of applicants nationwide.[110] While most entitlement benefits applications take nearly one year to be approved, the average application from the Miami-Dade program is approved within 30 days.[111] As a result, the County dramatically reduces the amount of money it spends treating people with mental illness in its diversion programs.

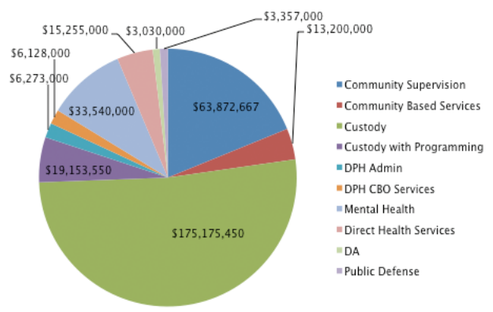
Percentage of Realignment Funds Spent on the Sheriff's Department, Probation Department, and Community Programs and Other Services.



d. State Funds Are Available to Fund Diversion

In addition to shifting costs to the federal government, diversion programs could take advantage of state funding that is available to L.A. to finance community services. In California, when state lawmakers in 2011 shifted responsibility to counties for offenders convicted of non-serious, non-violent, and non-sexual offenses, they gave counties money to pay for the costs, directing counties to use the money for supervision and "rehabilitative" services. In 2012–13, L.A. received $273 million in such realignment money.[112] Almost 54.8% of those funds have gone to the Sheriff's Department, which operates the jails, while only 18.7% went to programs and services such as mental health care.[113] But many other counties have allocated a much higher proportion of these funds to community-based treatment. For example, Santa Clara County, home of the City of San Jose, has used only 29.6% of its realignment funding for its sheriff's department and 33.9% for programs and services.[114] L.A.'s neighbor, Riverside County, has allocated only 49.5% to its sheriff's department and 22.8% to programs and services.[115] There is no reason why Los Angeles County could not follow their lead and increase the portion of these funds allocated to community treatment, particularly because that treatment would reduce the jail population and thus jail operating expenses for the Sheriff's Department.

Breakdown of How Los Angeles County Allocated Its FY 2013-14 Realignment (AB 109) Funding



Pie Chart Courtesy of Drug Policy Alliance

C. LOS ANGELES DOES NOT HAVE TO RE-INVENT THE WHEEL

Los Angeles need not reinvent the wheel when it comes to programs that divert people with mental illness away from jails and into community-based treatment programs. Many existing Los Angeles service providers can and do serve people with mental illness who have been involved in the criminal justice system.

L.A.'s Project 180 employs ACT and supportive employment in its diversion and re-entry programs.[116] A participant says that through Project 180, "for the first time in my life, I got help with my addiction and mental problems."[117]

Home for Good, an initiative of the United Way of Greater Los Angeles and the L.A. Area Chamber of Commerce, uses supportive housing and other interventions to address the problems people, including those with mental illness, experience when cycling through jails and emergency rooms and when facing the limited housing options available to those with a criminal record.[118]

L.A.'s Amity Foundation helps people with co-occurring substance abuse and mental health disorders turn their lives around, including substantial numbers of people who have been incarcerated in jails and prisons. It helps them reconnect with family, receive an education, and find work. It connects them with the mental health and substance abuse treatment they need.

Amity has dramatically reduced recidivism rates. A study of an Amity program in a San Diego prison found that only 27% of inmates who completed Amity's program returned to prison; for those who received no treatment, that figure ballooned to more than 75%.[119] In 1998, the Little Hoover Commission singled out Amity's substance abuse treatment program at Richard J. Donovan Correctional Facility in San Diego in its report on reducing crime and incarceration costs.[120] Based on the program's outcomes—one year after their release, just 17% of inmates who received treatment from Amity while in prison and following release were re-incarcerated, while 66% of those who received no treatment were back behind bars—the Legislative Analyst's Office estimated that expanding Amity's services to 10,000 more inmates would save $80 million in annual operating expenses, and $210 million in capital expenses.[121] The Little Hoover Commission found, however, that "[e]ven more significant are the economic and social savings that could be captured from these offenders by abandoning criminal behavior."[122]

Amity and numerous other providers in the County could expand their capacity to provide services for people with mental illness involved in the criminal justice system if the Board of Supervisors dedicated more funds to that effort, rather than continuing the failed practice of incarcerating huge numbers of people with mental illness in jail.

D. DIVERSION SUCCESS STORIES

The true effect of diversion programs is revealed not just by the statistics on recidivism rates and cost savings, but also by the stories of those who have participated in them.

1. Julie Reed: A Case Study

Julie Reed is one of the many people whose lives have been changed by Miami's diversion program. She was 13 years old the first time she was hospitalized. She was suicidal and had cut herself.

Julie got older; life got a little better. She did not always feel her best, but she was stable. She married. She had a kid. But when Julie was in her twenties, her husband killed himself, and Julie found him.

"Everything started piling up," Julie says. She began drinking. Alcohol led to cocaine, which led to crack. "I think the mental illness and addiction were intertwined," says Julie, who has been diagnosed with depression, anxiety, and bipolar disorder. Without insurance, she went untreated. Visiting a clinic required hours of waiting. "I wasn't well enough to fight… to get what I needed," she says. "It was easier for me to go out on the street and go to the dealer to get what I needed to make me feel better."

Between the ages of 30 and 40, Julie was in and out of jail in Miami-Dade County at least six times. She committed petty thefts to buy drugs. She often had manic episodes. Incarceration made her sicker. "Jail is not a place where you're going to get better," Julie says. She hid her illness. "You don't want to go in the psych ward because it's cold and scary. Even though I felt psychotic and bad, I didn't say anything." Once she did reveal her disabilities, it took one month before she received medication for her mental illness. She had to repeatedly ask for medication to treat her HIV.

Her last arrest was in 2010, when she stole hair straighteners from a Walgreens to pay her dealer. Someone grabbed her, and she became so upset that she threw a glass bottle against a wall. She did not aim at anyone. But she was charged with assault.

When a prosecutor offered to give her probation, Julie said no. Her life had to change. So her public defender referred her to the County's felony diversion program. After a stay in residential treatment, diversion program staff helped her find housing, work in the community, and health care. She got a job as a private nurse, after years of unemployment. She temporarily moved back home to care for her mom. For one year, she reported to a judge. And she thrived. "There were challenges and struggles," she says. "But I was able to get through it with the help of all these people."

Julie now provides to others the kind of support she received just a few years ago. For the past two and a half years, she has worked as a peer specialist for Miami-Dade's misdemeanor diversion program. She makes sure participants attend their court dates. She visits them at home. She takes public transportation with them to appointments, to show them the route. "I have a special talent, because I've been there. I have a connection with people who are on that challenging journey." She is in college, studying for a degree in social work. She talks to her two adult daughters every day. If the diversion program had been available to her earlier, Julie says, maybe her life would have changed sooner. "It's helped a lot of people that I know, that I see every day."

2. Peter Starks: A Case Study

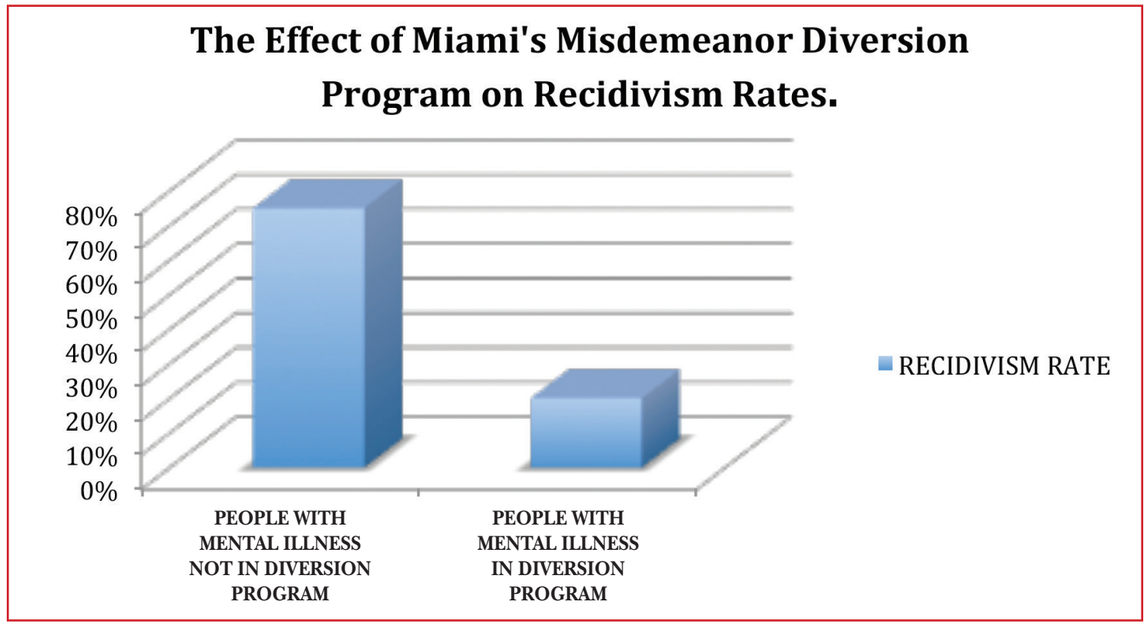
Peter Starks was saved by Amity. Substance abuse and mental health issues have followed Peter since childhood. Growing up, he cared for his younger siblings as stepfathers drank too much and abused his mother. At age 17, he left home to join the Marines and served in Vietnam for a year. "Every minute I was awake I was high," he says.

After combat and his return to the United States, undiagnosed post-traumatic stress disorder (PTSD) haunted Peter. He was, he says, "ashamed of what I'd become inside." He became addicted to heroin, then crack. Less than six months after leaving the Marines, he landed in Los Angeles County jail. In the mid-1980s, he received his first state prison sentence after a robbery conviction. After his release, Peter, on drugs, bounced between jail, prison, and the streets, a cycle broken briefly in the late 1990's when he received treatment for depression and PTSD from the Veterans Administration and stayed clean for a year.

In Los Angeles County's Twin Towers jail in 2008, Peter asked deputies for medication for his PTSD every day, but he never received it. He was anxious and angry. "I did all this in the service and I need medication," Peter explains. "I was an emotional wreck. I was ready to do something very drastic, in terms of making them kill me." Deputies wrestled him and beat him. He left jail for prison after six months.

On Christmas Day 2008, "I realized I was 61 years old," Peter says, and "I'm going to die, and I know it." That very day, he joined Amity's in-prison treatment program. When he was released from prison in December 2009, he went straight to Amity's Los Angeles residential program for substance abuse treatment. "They loved me when I didn't know how to love myself, gave me something to believe in," he says. Amity taught him, "that I can forgive myself for the stuff I did in Nam, that I didn't have to die with a syringe in my neck."

Peter now works with Amity's other clients. "I'm Uncle Pete and Grandpa Pete to so many people," he says. As for Amity, he says, "you'll leave here a better person. … We've got miracles here."



3. Miami-Dade's Diversion Program

Miami-Dade County uses both pre-booking and post-booking programs to divert those with mental illness. The pre-booking program aims to divert individuals with mental illness from entering the criminal justice system. Police officers and 911 operators learn to recognize the signs of mental illness and, when appropriate, help people with mental disabilities access treatment.[123] Officers can forgo arresting misdemeanants with mental illness.[124] For alleged felony offenses, officers must arrest the suspect.[125] The pre-booking program has been enormously successful. In 2011, 3,500 trained officers responded to 16,000 mental health-related crisis calls. The result: more than 3,500 pre-booking diversions and a mere 45 arrests.[126]

Diversion efforts continue after arrest. Arrest affidavits contain a section where police officers can flag possible candidates for diversion.[127] In addition, all misdemeanor defendants are screened upon booking into jail for possible diversion.[128] Psychiatrists assess candidates and refer those who are eligible, typically individuals with mental illness and substance abuse, to the diversion program.[129] Service providers meet with defendants who agree to participate. The diversion program provides crucial links to housing services and community-based mental health treatment.[130] Court officials have the power to modify or dismiss charges after defendants' participation in treatment.[131]

For those charged with felonies, victim approval is required to participate in the diversion program, and individuals charged with violent felonies are ineligible.[132] However, the prosecutor has the power to modify charges, with victim approval, to make a defendant eligible for the program.[133] The majority of referrals for the felony diversion program come from public defenders, private defense attorneys, the prosecutor's office, and the jail.[134] Like the misdemeanor program, the felony program links defendants to essential services. The County's criminal benefits team helps with applications for government benefits.

4. San Francisco County's Diversion Program

San Francisco County's program is a post-booking program and is run through a mental health court. The program, which began in 2002, depends on referrals, including from judges, jail psychiatric workers, the district attorney's office, the police department, and even family members.[135] Defendants with mental illness facing felony or misdemeanor charges are eligible, except for those charged with homicide or sex-related offenses.[136] The district attorney must consent to participation for defendants charged with certain offenses, including those involving domestic violence, weapons, and elder abuse,[137] or those previously convicted of a serious offense.[138]

A team consisting of the judge, assistant district attorney, defense lawyer, a community mental health care provider, jail psychiatric services worker, and a probation officer decides on admission to the program.[139] Program participants remain in custody until they have a case manager and a plan for community-based treatment.[140] Upon release, participants go to community-based treatment programs, and return regularly to court,[141] allowing the judge to monitor their progress.[142] After participants spend at least one year in the program, the court team can choose to release them from the program. Charges may be reduced or dismissed, as agreed between the district attorney, defense attorney, and judge.[143]

E. A DIVERSION PROGRAM FOR LOS ANGELES

How could Los Angeles build a robust diversion program that would ease problems at the jails, enhance public safety, save taxpayers money, and help individuals with mental illness recover?

The County must develop and implement a blueprint. The target population for diversion must be defined. The services, including ACT and supportive housing, that will be offered to the target population must be identified. The processes by which candidates for diversion will be identified, assessed, and referred must be developed. Costs, including personnel and training costs, as well as savings, must be projected, and funding agreed upon. To be successful, the blueprint must be acceptable to police, prosecutors, judges, defense counsel, the mental health system, and ultimately the Board of Supervisors.

It should take no more than four months to develop a blueprint, and implementation could begin just months after the blueprint is in hand.

Fortunately, there is substantial expertise within the County to draw on. Additional expertise is available through national organizations like SAMHSA's GAINS Center operated by Policy Research Associates in New York,[144] and the Technical Assistance Collaborative in Boston.[145]

III. CONCLUSION

The large-scale incarceration of people with mental illness has been a failure—it is expensive, inhumane, and does not improve public safety. Realignment has imposed new burdens on Los Angeles and other California counties by making them responsible for people who would previously have been in state prison or under the supervision of state parole officers. But it has also provided Los Angeles with the opportunity to rethink its approach to criminal justice for people with mental illness and to create a diversion program that will reduce recidivism and costs while improving mental health outcomes. We hope to have the opportunity to work with County leaders to create such a program, which will benefit all of L.A.'s citizens.

The large-scale incarceration of people with mental illness has been a failure – it is expensive, inhumane, and does not improve public safety.

[1] Doris J. James & Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics (Sept. 2006), www.bjs.gov/content/pub/pdf/mhppji.pdf; see also Allen J. Beck, et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12, U.S. Department of Justice, Bureau of Justice Statistics, at 7 (May 2013), www.bjs.gov/content/pub/pdf/svpjri1112.pdf (*noting disparate rates of mental illness among inmates versus those in the general population); NAT'L RESEARCH COUNCIL, COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION AND COMM.Committee ON LAW AND JUSTICE, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES, 204–05 (2014) [hereinafter, THE GROWTH OF INCARCERATION IN THE UNITED STATES] (internal citations omitted), *available at* http://www.nap.edu/catalog.php?record_id=18613) ("The prevalence of mental health problems is most striking in jails (64 percent)," where 15% of men and 31% of women may have serious mental illness).

[2] Steve Lopez, *A crime against mentally ill*, L.A. TIMES, July 17, 2013, articles.latimes.com/2013/jul/17/local/la-me-0717-lopez-twintowers-20130717.

[3] Dr. Terry A. Kupers, *Report on Mental Health Issues at Los Angeles County Jail*, at 6 (June 27, 2008), www.aclusocal.org/

issues/prisoners-rights/jails-project/dr-kupers-report/ ("I would estimate with a high degree of certainty that at least double the number [of inmates] on the mental health caseload [of 2,088 as of 2008] need mental health treatment").

[4] Lopez, *A crime against mentally ill, supra* note 2; *see also* Steve Lopez, Early *intervention would keep more out of L.A. County Jail's snake pit*, L.A. TIMES, July 20, 2013, articles.latimes.com/2013/jul/20/local/la-me-0721-lopez-baca-20130721.

[5] Mental Health America, Position Statement 52: *In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System* at 4 (June 8, 2008).

[6] Sandra Hernandez, *Fresh money sources could help L.A. County with its jails*, L.A. TIMES , Sept. 24, 2013, www.latimes.com/opinion/opinion-la/la-ol-los-angeles-county-jail-state-mentally-ill 20130924,0,1756298.story.

[7] *See, e.g.*, Vera Institute of Justice, *Los Angeles County Jail Overcrowding Reduction Project*, at xix–xxiv (Sept. 2011), www.vera.org/sites/default/files/resources/downloads/LA_County_Jail_Overcrowding_Reduction_ Report.pdf.; *see also* R. Andrew Chambers, et al., *A neurobiological basis for substance abuse comorbidity in schizophrenia*, 50 BIOLOGICAL PSYCHIATRY 71–83 (2001); Steve Lopez, *Court needs alternatives in handling mentally ill*, L.A. TIMES , Oct. 5, 2013, www.latimes.com/local/la-me-lopez-airportcourt20131006,0, 5379772.column.

[8] Vera Institute of Justice, *Los Angeles County Jail Overcrowding Reduction Project, supra* note 7, at xix.

[9] THE GROWTH OF INCARCERATION IN THE UNITED STATES, *supra* note 1 at 205 (internal citation omitted); *see also* Robert M. Post & Peter Kalivas, *Bipolar Disorder and Substance Misuse: Pathological and Therapeutic Implications their Comorbidity and Cross-Sensitisation*, 202 BRIT J. OF PSYCHIATRY 172–76 (2013); Mental Health America, *Position Statement 52, supra* note 5, at 4.

[10] Vera Institute of Justice, *Los Angeles County Jail Overcrowding Reduction Project, supra* note 7, at xix.

[11] Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, 2000–2011 Statistical Tables* (August 2013), www.bjs.gov/content/pub/pdf/mljsp0011.pdf (suicide is the leading cause of death in local jails); Kupers, *Report on Mental Health Issues at Los Angeles County Jail, supra* note 3.

[12] Cynthia Blitz, et al., *Physical Victimization in Prison: The Role of Mental Illness*, 31 INT'L J. LAW & PSYCHIATRY 385 (2008), *available at* www.ncbi.nlm.nih.gov/pmc/articles/PMC2836899/;/; Beck et al., *Sexual Victimization in Prisons, supra* note 1.

[13] John Johnson, *Jail Suicides Reach Record Pace in State*, L.A. TIMES, June 16, 2002, articles.latimes.com/2002/jun/16/local/me-suicide16; Letter from Dr. Terry A. Kupers, Professor at the Wright Institute, to Zev Yaroslavsky, Los Angeles County Supervisor (May 21, 2013) (on file with authors); Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, supra* note 11.

[14] Letter from U.S. Department of Justice, Civil Rights Division and U.S. Attorney for the Central District of California, to Anthony Peck, Deputy County Counsel and Stephanie Jo Reagan, Principal Deputy County Counsel Los Angeles County Executive, regarding CRIPA Investigation of Mental Health Care and Suicide Prevention in the Los Angeles County Jail 17 (June 4, 2014) (on file with authors).

[15] According to documents we obtained from the County, the daily cost of psychotropic medication for mentally ill inmates was $14,000 per day in 2006–07. The budget for the Department of Mental Health for the jails was approximately $27 million dollars for fiscal year 2011–12. (Documentation on file with the authors.)

[16] *See, e.g.,* North Carolina Jail Diversion Program, *Jail Diversion FAQs*, www.ncdhhs.gov/mhddsas/providers/ NCjaildiversion/faqs.htm.

[17] Letter from Dr. Kupers to County Supervisor Yaroslavsky, *supra* note 13; see also H. Richard Lamb et al., *Treatment Prospects for People With Severe Mental Illness in an Urban County Jail*, 58 PSYCHIATRIC SERVICES, 782 (2007); Jennifer S. Bard, *Re-Arranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot Be Made Right by Piecemeal Changes to the Insanity Defense*, 5 HOUS. J. HEALTH L. & POL'Y 1, 6 (2005); D. Lovell, et al., *Recidivism and Use of Services Among People with Mental Illness After Release from Prison*, 53 PSYCHIATRIC SERVICES 1290, 1296 (2002).

[18] *See, e.g., United States v. Georgia*, Civil Action No. 10-249 (N.D. Ga.) (DOJ entered into settlement agreement requiring Georgia to, *inter alia*, make available ACT, supportive housing, and supportive employment available to individuals with serious mental illness who are released from jails or prisons); *Amanda D., et al. v. Hassan, et al.*; Civil Action No. 1:12-53 (D.N.H.) (Plaintiffs and DOJ as intervener entered into settlement agreement requiring New Hampshire to, *inter alia,* make available ACT, supportive housing, and supportive employment available to individuals who have had criminal justice involvement as a result of their mental illness); *United States v. Delaware*, Civil Action No. 11-591 (D. Del.) (DOJ entered into settlement agreement requiring Delaware to, *inter alia*, make available ACT, supportive housing, and supportive employment available to people with serious mental illness who have been arrested, incarcerated, or had other encounters with the criminal justice system due to conduct related to their serious mental illness).

[19] Steve Lopez, Jackie Lacey says L.A. County should stop locking up so many people, L.A. Times, May 10, 2014 http://www.latimes.com/local/la-me-0511-lopez-lacey-20140511-column.html; *Developing a Comprehensive Diversion Plan for Los Angeles County*, Motion by Supervisor Mark Ridley-Thomas, May 6, 2014, motion passed 5-0 (Documentation on File with Authors).

[20] Steve Lopez, *Jackie Lacey says L.A. County should stop locking up so many people, supra* note 19.

[21] Erika Aguilar, Rina Palta, *LA County DA Jackie Lacey: Getting mentally ill out of jail is a priority*, KPCC, May 7, 2014, http://www.scpr.org/news/2014/05/07/44025/how-to-get-mentally-ill-out-of-the-jail-system-thr/.

[22] Letter from U.S. Department of Justice to Anthony Peck, *supra* note 14.

[23] SAMHSA'S GAINS CENTER, http://gainscenter.samhsa.gov (last visited June 3, 2014).

[24] TECHNICAL ASSISTANCE COLLABORATIVE, www.tacinc.org (last visited June 3, 2014).

[25] *See generally*, The Judge David L. Bazelon Center for Mental Health Law, *When Opportunity Knocks: How the Affordable Care Act Can Help States Develop Supported Housing for People with Mental Illnesses* (April 2014), http://www.bazelon.org/portals/0/Where%20We%20Stand/Community%20Integration/Olmstead/When%20Opportunity%20Knocks.%20Bazelon%20Center%20for%20Mental%20Health%20Law.pdf; The Bazelon Center, *A Place of My Own: How The ADA Is Creating Integrated Housing Opportunities For People With Mental Illnesses*, (March 2014), http://www.bazelon.org/portals/0/Where We Stand/Community Integration/Olmstead/A Place of My Own. Bazelon Center for Mental Health Law.pdf?utm_source=4.1.4_A+Place+of+My+Own+Report+&utm_campaign=3.27.14_APlaceofMyOwn&utm_medium=emai; The Bazelon Center, *Supportive Housing: The Most Effective and Integrated Housing for People with Mental Disabilities* (2010), www.bazelon.org/LinkClick.aspx?fileticket=eRwzUzZdIXs%3d&tabid=126.

[26] Roman, Caterina, et al., *Principles and Practice in Housing for Persons with Mental Illness Who Have Had Contact with the Justice System* at 2 (April 3, 2006) , http://www.urban.org/UploadedPDF/411314_housingmentalillness.pdf at 2 (April 3, 2006) (internal citations omitted).

[27] Flamming, Daniel, et al., *Where We Sleep: Costs when Homeless and Housed in Los Angeles* at 3 (2009), http://www.economicrt.org/summaries/Where_We_Sleep.html.

[28] Abt Associates, Inc., *Interim Report on Development and Operating Costs of Permanent Supportive Housing: Multi-Year Evaluation of Permanent Supportive Housing Financed by the State of Connecticut* (Jan. 9, 2012), www.csh.org/wp-content/uploads/2012/03/Report_-CTPSHDevlpandOpCosts_1912.pdf (concluding that, when development costs are included, developed supportive housing costs $28,775 per year, compared with $15,914 per year for scattered-site supportive housing).

[29] PATHWAYS TO HOUSING, www.pathwaystohousing.org (last visited June 3, 2014).

[30] *See generally*, Tsemberis, S.., et al. *Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals with Psychiatric Disabilities*, 51 PSYCHIATRIC SERVICES 4 87 (4 (2000); Gulcer, L., et al., *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 J. COMMUNITY APPL. SOC. PSYCHOL., 171 (2003); Tsemberis, S.., et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals with a Dual Diagnosis*, 94 AM. J. OF PUB. HEALTH, 651 (2004); Stefanic, A., et al., *Housing First for Long-Term Shelter Dwellers with Psychiatric Disabilities in a Suburban County: A Four-Year Study of Housing Access and Retention*, 28 J. OF PRIMARY PREVENTION 265 (2007).

[31] Tsemberis, *Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals, supra* note 30, at 488.

[32] Fairmont Ventures, Inc., Evaluation of Pathways to Housing PA (Jan. 2011), pathwaystohousing.org/pa/wp-content/themes/pathways/assets/uploads/PTHPA-ProgramEvaluation.pdf; see also Tsemberis, *Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals, supra* note 30, at 487.

[33] *Pathways to Housing PA: Success Stories*, http://vimeo.com/52086350.

[34] CASES, *Nathaniel Act Program*, www.cases.org/programs/abh/act.php.

[35] CASES, *Nathaniel ACT ATI Program: ACT or FACT?*, www.cases.org/articles/ACTBrief051111.pdf.

[36] *Id.; see also* Bradley Jacobs, *Nathaniel Assertive Community Treatment: New York County Alternatives to Incarceration* (Aug. 26, 2011), www.cases.org/articles/APAPresentation08.26.11.ppt.

[37] CASES, *Nathaniel ACT ATI Program: ACT or FACT?, supra* note 35. www.cases.org/articles/ACTBrief051111.pdf.

[38] THRESHOLDS' JUSTICE PROGRAM, www.thresholds.org/our-work/programs/justice-program (last visited June 3, 2014).

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Rowe, Genevieve, et al., *Evaluation of the Forensic Assertive Community Treatment Program, King County*, (March 2012),

http://www.kingcounty.gov/~/media/health/MHSA/documents/121004_FACTEvaluation_FINALREPORT_10-4-12.ashx.

[44] *Id.* at ii.

[45] *Id.*

[46] *Id.* at iv.

[47] *The New Asylums:, Frequently Asked Questions*, PBS FRONTLINE (May 10, 2005), www.pbs.org/wgbh/pages/frontline/shows/asylums/etc/faqs.html.

[48] *The New Asylums, Deinstitutionalization: A Psychiatric "Titanic"*, PBS FRONTLINE" (May 10, 2005), www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html#11.

[49] Chris Koyanagi, *Learning From History: Deinstitutionalization of People with Mental Illness As Precursor to Long-Term Care Reform*, KAISER COMMISSION ON MEDICAID AND THE UNINSURED, at 1–2 (Aug. 2007), www.nami.org/Template.cfm?Section=About_the_Issue&Template=/ContentManagement/ContentDisplay.cfm&ContentID=137545.

[50] *Nation's Jails Struggle With Mentally Ill Prisoners*, NAT'L PUB. RADIO (Sept. 4, 2011), www.npr.org/2011/09/04/140167676/nations-jails-struggle-with-mentally-ill-prisoners.

[51] THE GROWTH OF INCARCERATION IN THE UNITED STATES, *supra* note 1, at 223); *see also* Letter from Professor Kupers to County Supervisor Yaroslavsky, *supra* note 13 (overcrowding "is known to correlate with increased rates of violence, psychiatric breakdown and suicide").

[52] THE GROWTH OF INCARCERATION IN THE UNITED STATES, *supra* note 1, at 160.

[53] Kupers, *Report on Mental Health Issues, supra* note 3, at 13.

[54] Kupers, *Report on Mental Health Issues, supra* note 3, at 12–13.

[55] THE GROWTH OF INCARCERATION IN THE UNITED STATES, *supra* note 1, at 223 (internal citations omitted); Blitz et al., *Physical Victimization in Prison, supra* note 12; Beck et al., *Sexual Victimization in Prisons and Jails, supra* note 1.

[56] Letter from U.S. Department of Justice, Civil Rights Division to Joanne Sturges, Los Angeles County Executive, regarding CRIPA Investigation of Mental Health Services in the Los Angeles County Jail, at 17 (Sept. 5, 1997), www.clearinghouse.net/chDocs/public/JC-CA-0002-0003.pdf.

[57] Kupers, *Report on Mental Health Issues, supra* note 3, at 41.

[58] Jack Leonard & Robert Faturechi, *L.A. county jailers more likely to use force on mentally ill inmates*, L.A. TIMES, Jan. 11, 2012, articles.latimes.com/2012/jan/11/local/la-me-sheriff-jails-20120111.

[59] See, e.g., Johnson, *Jail Suicides Reach Record Pace in State, supra* note 13; Letter from Dr. Kupers to County Supervisor Yaroslavsky, *supra* note 13.

[60] THE GROWTH OF INCARCERATION IN THE UNITED STATES, *supra* note 1, at 224 (internal citation omitted).

[61] Editorial, *L.A. County's new/old jail problem*, L.A. TIMES , Sept. 10, 2013, www.latimes.com/opinion/editorials/la-ed-jails-20130910,0,1930451.story.

[62] Letter from U.S. Department of Justice, Civil Rights Division to William Fujioka, Los Angeles County Chief Executive Officer and Leroy D. Baca, Los Angeles County Sheriff (Sept. 5, 2013) (on file with authors).

[63] *Id.*

[64] Letter from U.S. Department of Justice to Anthony Peck, supra note 14.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] Letter from Dr. Kupers to County Supervisor Yaroslavsky, *supra* note 13.

[69] *Id.; see also* Lamb et al., *Treatment Prospects for People With Severe Mental Illness in an Urban County Jail, supra* note 17; Bard, *Re-Arranging Deck Chairs on the Titanic, supra* note 17; Lovell et al., *Recidivism and Use of Services Among People with Mental Illness After Release from Prison, supra* note 17.

[70] ADMINISTRATIVE OFFICE OF THE COURTS, TASK FORCE FOR CRIMINAL JUSTICE COLLABORATION ON MENTAL HEALTH ISSUES: FINAL REPORT at 1, 17 (April 2011).

[71] Letter from U.S. Department of Justice to Anthony Peck, supra note 14.

[72] Lamb et al., *Treatment Prospects for People With Severe Mental Illness in an Urban County Jail, supra* note 17, at 784.

[73] H.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. & L. LAW 163 (2005), *available at* www.addictioncounselorce.com/articles/101367/assessing.pdf.

[74] CASES, *Nathaniel ACT ATI Program: ACT or FACT?, supra* note 35; see also Jacobs, *Nathaniel Assertive Community Treatment, supra* note 36.

[75] THRESHOLDS JUSTICE PROGRAM, *supra* note 38.

[76] Rowe et al., *Evaluation of the Forensic Assertive Community Treatment Program, King County, supra* note 43, at ii.

[77] *Id.*

[78] *See* Eleventh Judicial Criminal Mental Health Project, *Program Summary* (Jan. 2013) (on file with authors); *see also* Interview with Steven Leifman, Judge, Eleventh Judicial Circuit of Florida (June 7, 2013).

[79] *See* Eleventh Judicial Criminal Mental Health Project, *Program Summary, supra* note 78.

[80] Note that a diversion program can be run through any arraignment court; no special court is required. *See, e.g.*, CASES, *Nathaniel ACT ATI Program: ACT or FACT?, supra* note 35 (noting that the Nathaniel Project is administered through a non-specialty court approach in which fifteen judges successfully monitor Nathaniel ACT participants).

[81] Dale E. McNiel & Renée L. Binder, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 164 AM. J. PSYCHIATRY 1395, 1401 (2007), *available at* www.sfsuperiorcourt.org/sites/default/files/pdfs/2215.pdf (finding that "[b]y 18 months, the risk of mental health court graduates being charged with any new offense was about 34 out of 100, compared with about 56 out of 100 for comparable persons who received treatment as usual, and the risk of mental health court graduates being charged with a new violent crime was about half that of the treatment as usual group (6 out of 100 compared with 13 out of 100)"); *see also* Superior Court of California County of San Francisco, San Francisco Collaborative Courts, *Behavioral Health Court Fact Sheet,* at 2 (May 2013), www.sfsuperiorcourt.org/sites/default/files/images/BHC%20Fact%20SheetMay2013.pdf (reporting that "participation reduces the probability of a new criminal charge by 26 percent in the 18 months after entering the program" and that "participation reduces the probability of a new *violent* criminal charge by 55 percent in the 18 months after entering the program, when compared to other mentally ill inmates").

[82] Arley J. Lindberg, *Examining the Program Costs and Outcomes of San Francisco's Behavioral Health Court: Predicting Success*, Prepared for the Office of Collaborative Justice Programs Superior Court of California, San Francisco County, at 16–17 (June 2009), www.sfsuperiorcourt.org/sites/default/files/pdfs/2417%20Examine%20Program%20Costs%20and%20Outcomes.pdf; *see also* Steadman & Naples, *Assessing the effectiveness of jail diversion programs, supra* note 73, at 168 ("it is critical to recognize that the clinical profile of the diverted subjects included serious mental illness, high rates of co-occurring substance use disorders, and fragmented lives. For these conditions, Assertive Community Treatment (ACT), psychotropic medications, and integrated programs for co-occurring substance use disorders would have been indicated. In few U.S. jail diversion programs do clients have sufficient access to integrated treatment and ACT. The blunt instruments used for both diverted and comparison subjects are usually medication and 'counseling.' The array of community-based services clinically indicated is rarely provided.").

[83] Vera Institute of Justice, *Los Angeles County Jail Overcrowding Reduction Project, supra* note 7, at 49 (the County must pay the basic housing, food and security costs for inmates, which average more than $100 per day).

[84] County of Los Angeles Department of Auditor-Controller, *Prisoner Maintenance Rates—Fiscal Year 2006–07* (March 20, 2006) (on file with authors).

[85] Sheriff's Department Jail Hospital Care Rates, Fiscal Year 2006–07 (on file with the authors).

[86] Lamb et al., T*reatment Prospects for People With Severe Mental Illness in an Urban County Jail, supra* note 17, at 784.

[87] Total cost based on documentation obtained from County plus increase in number of mental health inpatient beds recommended in 2013 Jail Plan by Vanir Construction Management, and estimate of 20% increase in DMH personnel in the jails to address DOJ concerns about lack of treatment and mental health programming for inmates with mental illness. (Documentation and calculations on file with the authors).

[88] Californians for Safety and Justice, *Enrolling County Jail and Probation Populations in Health Coverage*, at 9–10 & Figure E (April 2013).

[89] Vera Institute of Justice, *Los Angeles County Jail Overcrowding Reduction Project, supra* note 7, at xix.

[90] *Id.*

[91] Californians for Safety and Justice, *Enrolling County Jail and Probation Populations in Health Coverage, supra* note 88, at 15 (noting that Medicaid expansion under the Affordable Care Act does not change the inmate exception).

[92] ADMINISTRATIVE OFFICE OF THE COURTS, TASK FORCE FOR CRIMINAL JUSTICE COLLABORATION ON MENTAL HEALTH ISSUES: FINAL REPORT, *supra* note 70, at 4.

[93] Interview with Dave Pilon, President and CEO of Mental Health America of Los Angeles (May 20, 2014).

[94] *Id.*

[95] Flamming et al., *Where We Sleep: Costs when Homeless and Housed in Los Angeles, supra* note 27, at 1.

[96] *Id.* at 16, 18.

[97] *Id.* at 11.

[98] Flamming, Daniel, et al., *Getting Home: Outcomes from Housing High Cost Homeless Hospital Patients* at 1–2 (2013), http://ahcd.assembly.ca.gov/sites/ahcd.assembly.ca.gov/files/hearings/Getting_Home_2013-economic%20roundtable%20study.pdf.

[99] *Id.* at 31 (emphasis added).

[100] Interview with Judge Steven Leifman, *supra* note 78.

[101] Superior Court of California, County of Orange, *Collaborative Courts 2012 Annual Report*, at 21, http://occourts.org/directory/collaborative-courts/reports/2012-annual-report.pdf.

[102] Arley Lindberg, *Costs and Benefits of Behavioral Health Court: Findings from "Examining Program Costs and Outcomes of San Francisco's Behavioral Health Court,"* SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN FRANCISCO, SAN FRANCISCO COLLABORATIVE COURTS at 1 (May 2009), www.sfsuperiorcourt.org/sites/default/files/pdfs/2422%20Costs%20and%20Benefits%20of%20Behavioral%20Health%20Court.pdf; *see also* Lindberg, *Examining the Program Costs and Outcomes of San Francisco's Behavioral Health Court, supra* note 82, at 13.

[103] Vanir Construction Management, Inc., *Los Angeles County Jail Plan, Phase II*, at I-16–I-17 (Apr. 21, 2014), http://www.bos.lacounty.gov/LinkClick.aspx?fileticket=88pJb2FG0k4%3d&portalid=1.

[104] *Id.*

[105] *See* Californians for Safety and Justice, *Enrolling County Jail and Probation Populations in Health Coverage, supra* note 88, at 15. The only exception to the bar on Medicaid payment for inmate mental health or medical treatment is for health care provided offsite at a hospital or non-correctional setting.

[106] The Bazelon Center, *When Opportunity Knocks, supra* note 25, at 6.

[107] *Id.* at 7.

[108] Vanir Construction Management, *Los Angeles County Jail Plan, Final Report*, at 11 (July 5, 2013) file.lacounty.gov/bc/q3_2013/cms1_197361.pdf.

[109] *See, generally,* PATHWAYS TO HOUSING *supra* note 29 (requiring participants to set aside 30% of their income, including from public benefits, to pay for housing).

[110] Eleventh Judicial Criminal Mental Health Project, *Program Summary, supra* note 78, at 5–6.

[111] *Id.* at 6.

[112] *See 2011–12 AB 109 Allocations,* www.cdcr.ca.gov/realignment/docs/BASE-REALIGNMENT-FUNDING.pdf.

[113] Board of State and Community Corrections, *2011 Public Safety Realignment Act: Report on the Implementation of Community Corrections Partnership Plans*, at 45–47 (June, 2013) http://www.bscc.ca.gov/download.php?f=/Report_on_the_Implementation_of_Community_Corrections_Partnership_Plans.pdf.

[114] *Id.* at 94–95.

[115] *Id.* at 73–75.

[116] Project 180, *Programs*, www.project180la.com/Programs.html.

[117] Project 180, *Client Successes*, www.project180la.com/ClientSuccesses.html.

[118] United Way of Greater Los Angeles, Home for Good, www.unitedwayla.org/home-for-good/; United Way of Greater Los Angeles, Home for Good: Action Plan to End Chronic and Veteran Homelessness by 2016, 2012 update at 7, 20, www.unitedwayla.org/wp-content/uploads/pdfs/HomeForGood_Action_Plan.pdf.

[119] Amity Foundation, Amity California, Amity's Vista Ranch, www.amityfdn.org/California/California%20Continued.php#vista.

[120] Little Hoover Commission, Beyond Bars: Correctional Reforms to Lower Prison Costs and Reduce Crime, Finding 3: Prison and Parole (Jan. 1998), www.lhc.ca.gov/lhcdir/144/TC144.html.

[121] Id.

[122] Id.

[123] Eleventh Judicial Criminal Mental Health Project, Program Summary, supra note 78, at 2–3; Steven Leifman & Tim Coffey, The Next Generation of Behavioral Health and Criminal Justice Interventions, Nat'l Council Mag. No. 1 2012 at 58–59.

[124] Interview with Joanna Sandstrom, Associate State Attorney, Eleventh Judicial Circuit of Florida (July 16, 2013).

[125] Id.

[126] Leifman & Coffey, *The Next Generation of Behavioral Health and Criminal Justice Interventions, supra* note 123 at 58–59.

[127] Interview with Judge Steven Leifman, *supra* note 74.

[128] Eleventh Judicial Criminal Mental Health *Project, Program Summary, supra* note 78, at 3.

[129] Interview with Judge Steven Leifman, *supra* note 74.

[130] Eleventh Judicial Criminal Mental Health Project, *Program Summary, supra* note 74, at 3.

[131] *Id.* at 4.

[132] Interview with Joanna Sandstrom, *supra* note 124.

[133] *Id.*

[134] *Id.*

[135] *See* Superior Court of California County of San Francisco, *Behavioral Health Court: Policies and Procedures Manual*, at 6 (Feb. 2009), www.sfsuperiorcourt.org/sites/default/files/pdfs/1972%20Behavioral%20Health%20Court%20Policies%20and%20Procedures.pdf (noting that "[c]ases are generally identified in criminal court by Superior Court Judges, the Office of the District Attorney, community treatment providers, Jail Psychiatric Services clinicians, the San Francisco Police Department's psychiatric liaison, the Adult Probation Department, family members and other community members.").

[136] *See id.* at 3; Interview with Tanya Mera, Director of Reentry Services, Jail Health Services, San Francisco Department of Public Health (July 11, 2013).

[137] *See* Superior Court of California County of San Francisco, *Behavioral Health Court: Policies and Procedures Manual, supra* note 135, at 3 n.1 (noting that "Penal Code section 1192.7(c) includes (other than sex offenses and homicide), but is not limited to: attempted murder, assault with a deadly weapon or instrument on a police officer; arson; any burglary in the first degree; robbery or bank robbery; kidnapping; any felony in which the defendant personally used a dangerous or deadly weapon; grand theft involving a firearm; carjacking; any felony offense which would also constitute a felony violation of Penal Code section 186.22; assault with a deadly weapon; discharge of a firearm at an inhabited dwelling, vehicle or aircraft; intimidation of victims or witnesses; criminal threats."); *see also* Cal. Penal Code § 1192.7(c), *available at* www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=01001-02000&file=1191-1210.5.

[138] *See* Superior Court of California County of San Francisco, *Behavioral Health Court: Policies and Procedures Manual, supra* note 135, at 2–3.

[139] *See id.* at 3.

[140] *See id.* at 9, app. VII at 5; Interview with Tanya Mera, *supra* note 136 (explaining that JPS helps with the implementation of treatment and case management and noting that one treatment program is Citywide Case Management Forensics); Interview with Kathleen Connolly Lacey, Program Director, University of California, San Francisco, Citywide Case Management Forensic Program (July 24, 2013) (explaining that Citywide Case Management Forensic Program is the primary treatment provider for the court and that the Program contracts with Community Behavioral Health Services of the San Francisco Department of Public Health).

[141] *See* Superior Court of California County of San Francisco, *Behavioral Health Court: Policies and Procedures Manual, supra* note 135, at 9, app. VII at 5.

[142] *See id.* at 9; Interview with Tanya Mera, *supra* note 136 (explaining that a participant who is doing better may come to court less frequently over time); Interview with Kathleen Connolly Lacey, *supra* note 140 (explaining that Citywide Case Management Forensic Program's case managers report to the Behavioral Health Court as well).

[143] *See* Superior Court of California County of San Francisco, *Behavioral Health Court: Policies and Procedures Manual, supra* note 135, at 4, 8, app. VII at 6 (explaining that "[t]he clinician is the primary person who makes the decision with regard to graduation with the concurrence of the BHC team"); Interview with Tanya Mera, *supra* note 136 (noting that the District Attorney and Public Defender agree to the "carrot" or how the charges will be handled if the defendant successfully completes the program).

[144] SAMHSA'S GAINS CENTER, *supra* note 23.

[145] TECHNICAL ASSISTANCE COLLABORATIVE, *supra* note 24.

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