[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 12, 2018

FY18-MH #01. Develop Pre-File Mental Health Diversion Pilot Programs.

Recommendation FY18-MH #01

This recommendation proposes the development of pilot programs for pre-file mental health diversion in judicial districts where the option or resources for the option may be lacking. The pilot will:

- Develop post-arrest, pre-file diversion programs specifically for individuals experiencing mental health disorders and who meet specific criteria and are determined able to benefit from diversion to treatment rather than being processed through the criminal justice system.
- Create pre-file mental health diversion programs that utilize a stakeholder-created, reviewed, and approved model (See **Appendix A.**)

In addition, local officials should promote the utilization of Adult Pretrial Diversion Programs and funding as created by §18-1.3-101, C.R.S.

Discussion

Despite mounting efforts to increase pre-arrest diversion for individuals with mental health disorders, some will continue to be charged and booked before their mental health concerns are clearly identified. Although mental health courts are operating across our state, they are a costly process and require defendants to enter a plea, creating long term difficulties in finding housing, employment, and rejoining their communities upon release.

Colorado has experience with pre-trial diversion programs through collaboration with community mental health providers, with examples both historically and currently in Denver's municipal court, and across the state.

To promote public safety, good outcomes for all citizens, and efficiency in our government and judicial system, promising models must be pursued to divert individuals into treatment at the earliest possible discretionary point. The Judicial Department currently oversees and administers programs within District Attorney's office, funded by §18-1.3.101, C.R.S to create diversion programs. The Department will benefit from pursuing partners for and promoting the utilization of the model proposed in this recommendation.

Proposed Statutory Language

No legislative action is necessary to implement these programs, although the Colorado Judicial Branch may benefit from a supplemental budget request to add staff to oversee, track, and evaluate this program.

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Appendix A

The Mental Health/Jails Taskforce designated a workgroup to develop the proposed model for Pre-File Mental Health Diversion Programs.

Vision:
Contribute to Colorado's effort to be the healthiest state by achieving sustainable systems and strategies that support good behavioral health outcomes, reduce incarceration and justice-involvement, save taxpayer dollars, and improve lives.

Purpose:
To recommend a model for a **pre-file mental health diversion program**. The model will serve as the basis for a pilot in sites across the state, including at least one rural and at least one urban pilot site. This model will achieve better and more sustainable behavioral health and public safety outcomes in our community by diverting individuals with mental health disorders, who have been accused of a low-level crime, out of the criminal justice system and into community treatment. This model will reduce incarceration of individuals living with behavioral health disorders, save taxpayer dollars, and improve lives through effective behavioral health interventions.

Workgroup Members:

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- Joe Pelle
- Abigail Tucker
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Model Summary:

- **Target Population**: Individuals living with behavioral health disorders whose disorders have contributed to or created the circumstances leading to low-level criminal behavior; in particular, those who have frequent contact with police and the courts and who would benefit from effective health interventions instead of repeated incarceration.

- **Goals:** Reduce the number of individuals with behavioral health disorders in jails by a designated percentage (to be set by each pilot), reduce the number and cost of court cases involving a person with a behavioral health disorder, demonstrate cost-savings and other measurable efficiencies in justice and healthcare resources management, and promote measurable positive life outcomes for individuals living with behavioral health disorder.

- **Key performance measures:** Data shall be examined over a six-month period, and may include:
    - Recidivism of individuals diverted to the program
    - Impact on jail bed days
    - Treatment engagement, measured by provider claims
    - Impact on court costs

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Model Principles:

- This model targets people who have been recently arrested for non-serious crimes; however, persons who have pending criminal charges and otherwise fit the criteria may also be considered.

- This model builds on existing focus and collaboration at the early intercepts of the Sequential Intercept Model[1] and prior.

- The model depends on alliances among law enforcement entities (i.e., arresting officer, jail personnel), judicial entities (i.e., public defenders, district attorneys, judges), and local mental health providers.

    - The partners must be dedicated to the program and form strong relationships.
    - In rural pilots, partners may operate regionally and via telehealth to cover viable caseloads.

- The model will depend on a series of discretionary decisions, including police discretion that an arrest is necessary, jail discretion to determine who to screen for mental health concerns, a discretionary recommendation by an evaluator as to whether to divert, and the ultimate decision to divert. These decisions will be informed by the criteria described herein, an assessment of criminogenic risk, a mental health assessment conducted by partnering clinicians, and information gathered during the arrest and processing.

- To foster collaboration and promote diversion to treatment, it is recommended that partnering evaluators be affiliated with or hired by local community mental health centers.

- To cultivate trust among partners and promote good outcomes for participants, no evaluation results or statements made about the current alleged crime will be used against participants for purposes of prosecution in the target offense. This model must ensure that all information obtained directly from or about the potential participant is privileged and confidential and may not be used in any fashion to promote the prosecution of the charges for which the participant is presently being evaluated.

- To foster successful behavioral health outcomes, the treatment provider will seek to use non-coercive methods of treatment; and, once diverted, the participant will have no further participation in the criminal justice system for the subject charges (other than narrow optional exceptions described below).

[1] The *Sequential Intercept Model* (Munetz and Griffin, 2006) identifies five conceptual points at which standard criminal justice processing points can be interrupted to offer community-based alternatives: (1) law enforcement/emergency services; (2) initial detention/initial court hearing; (3) jails/courts; (4) re-entry; and (5) community corrections/support.

- Prosecutors in counties that elect to participate in this project will need to agree, as part of this project, to defer filing charges in cases where individuals are recommended for this pre-charge diversion effort (through the screening process) and the judge finds the person is appropriate for this pre-charge diversion effort after hearing from the parties. If the prosecutor elects to maintain future filing authority, the circumstances under which the subject charges may be (re)filed are limited to either the participant (1) committing a new criminal offense in the six months after the diversion decision or (2) a complete failure by the participant to initiate treatment.

    - In order to assess initiation of treatment for purposes of future filing of charges, pilot programs may choose to implement a one-time communication from the treatment provider to the district attorney that simply indicates whether or not the participant has initiated treatment.

Proposed Model:

1. Adult arrestees who are brought into detention will be screened by a booking nurse, deputy, or other detention personnel for behaviors indicative of a mental or behavioral health disorder. The task force recommends that participants in the model use evidence-supported screening tools (e.g., Brief Jail Mental Health Screen[2] or the Colorado Pre-trail Assessment Tool[3]); however, the screening tool will be determined at the discretion of the detention facility with the goal of causing minimal or no disruption to the normal course of business.

2. Initial eligibility is based on the arresting charge and limited to:

    a. Non-VRA crime Petty Offenses & Non-VRA Misdemeanors
    b. Further, the specific pilot sites may agree to additional eligible charges. If all of the participants agree to add additional eligible charges, the workgroup recommends consideration of:
        i. Non-VRA Low-level felonies (Felony 4, 5, 6)
        ii. Low-level Drug Felonies (D3 and D4)

[2] See Osher, F. Scott, J.E., Steadman, H.J., & Robbins, P.C. (2006). Validating a brief jail mental health screen: Final technical report (NCJ 213805). National Institute of Justice. (ncjrs.gov/App/Publications/abstract.aspx?ID=235309)
[3] Pretrial Justice Institute. (2012). The Colorado Pretrial Assessment Tool (CPAT). Rockville, MD: PJI. (pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf)

3. Upon determination of initial eligibility, and before the filing of charges, the mental health evaluator will meet with the individual in the jail to conduct an initial assessment.

    a. While uniform assessment criteria should be included for all pilot sites, a structured evaluation tool may not be necessary. Assessments should, at a minimum, examine:

        i. Current symptomatology of a behavioral health disorder
        ii. History of behavioral health concerns, diagnoses, or treatment
        iii. Current involvement in treatment – this may include consultation with current providers
        iv. Social determinants of health (i.e., homelessness, employment, physical health, etc.)
        v. Willingness to engage in diversion program and commit to treatment

    b. During the assessment, and if the jurisdiction has implemented the one-time report requirement, the evaluator will obtain a limited Release of Information (ROI) to allow for the one-time report as well as data collection.

    c. The assessment will benefit from face-to-face interaction, but to promote rapid recommendations telehealth may be considered.

    d. Evaluations will be prioritized based on legal charges, focusing on lowest level offenses first.

4. Upon determination of a mental health concern, the evaluator will make a recommendation to divert into treatment. This recommendation will be sent to all partners:

    a. Public defenders and district attorneys
    b. Judges overseeing the pilot program
    c. Community mental health providers, to prepare for rapid intake and connection to services.

5. Partners will receive the recommendation from the evaluator and discuss any confounding issues or concerns. Upon discussion, one of the following determinations will be made:

    a. Agreement to divert with a “no-file” procedure and no report back.
    b. Agreement to defer decision with a plan to collect or review additional information.

6. The Mental Health Evaluator will report the outcome of the process (diverted or not), demographic information, as well as Medicaid ID if applicable to the entity that is collecting outcomes data.

Proposed Model/Decision Tree