

Advisory Memorandum

To: Mauro Morales
FR: West Virginia State Advisory Committee to the U.S. Commission on Civil Rights
Date: November 13, 2019
Subject: Advisory Memorandum on the Interaction Between Individuals with Mental Health Issues and the Criminal Justice System in West Virginia

Introduction

On September 9, 1957, Congress enacted the Civil Rights Act, thereby creating the U.S. Commission on Civil Rights (Commission).¹ Congress has charged the Commission with “establish[ing] at least one [advisory] committee in each State and the District of Columbia composed of citizens of that State or District,”² instructing them to collect and provide information, findings, and recommendations about civil rights matters in their states to the Commission.

When conducting examinations of civil rights issues, the Advisory Committees invite subject-matter experts to a public briefing or hearing so that they can inform and educate the members about the selected civil rights topic being reviewed. The 2013–2015 West Virginia Advisory Committee convened a briefing on August 14, 2015, in Charleston, West Virginia to examine the interaction between individuals with mental health issues and the criminal justice system. The experts were grouped on four panels, each focusing on a different facet of this complex, multi-faceted problem.

The 2013-2015 WV Advisory Committee members’ appointments expired before they submitted a report about the examination of their civil rights topic to the Commission. The current WV Advisory Committee members (2015-2019) submit this Advisory Memorandum to the Commission summarizing the testimony given at the 2015 hearing. Briefly, the following five themes emerged from the hearing:

1. The criminal justice system is not an adequate vehicle for providing services to incarcerated individuals who present with mental health issues,
2. Mental health courts have proven significant in reducing recidivism rates,
3. Increased and continued training and education of law enforcement agents, focusing on how to handle situations involving mentally ill individuals, would be beneficial because it would ultimately reduce police encounters with these individuals,
4. Treatment for substance abuse must also address mental health issues, although the Criminal Justice System should not conflate treatment for one as treatment for both, and

¹ Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 637, (codified as 42 U.S.C. § 1975).

² 42 U.S.C. § 1975a(d).

5. Community-based care is a necessary addition to West Virginia’s approach to treating incarcerated individuals with mental health issues because such care can alleviate the burden placed on the criminal justice system.

This Advisory Memorandum is organized as follows:

- Part A gives a brief statement of the problem,
- Part B highlights the experts’ August 2015 presentations according to five common themes,
- Part C summarizes the experts’ observations and conclusions,
- Part D provides a legislative update, and
- Part E identifies possible future issues.

Unless otherwise noted, each section presents statements made at the August 2015 Hearing.

A. Statement of the Problem: The Number of Incarcerated Individuals with Mental Health Issues Has Increased Placing a Heavy Burden on the U.S. Criminal Justice System, A Complex Web of Overlapping and Independent Agencies Not Designed with Mental Health Treatment in Mind

The criminal justice system “is the set of [federal, state, and local] agencies and processes established by [federal, state, and local] governments to control crime and impose penalties on those who violate laws.”³ These federal, state, and local agencies and processes have both overlapping and separate jurisdictions, depending on the nature of the crime and where the crime occurred. Police, prosecutors, defense attorneys, judges, and correction officials all have indispensable roles in this complex, multi-faceted system.

The number of incarcerated individuals with mental health issues is three to six times higher than the general population.⁴ Jails spend two to three times more on individuals with mental illness. This creates strained budgets and increased taxes, but produces few results in terms of effective treatment.⁵ Once individuals with mental health issues enter the criminal justice system, those individuals tend to remain in jail longer (18 percent longer than the average inmate)⁶ and have a

³ “The Criminal Justice System,” *National Center for Victims of Crime*, <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system> (accessed Jul. 30, 2019).

⁴ Steve Canterbury, testimony, Briefing Before the West Virginia State Advisory Committee to the U.S. Commission on Civil Rights, Charleston, WV, August 14, 2015, transcript, p. 114, (hereafter cited as *Charleston Briefing*); see also Hallie Fader-Towe & Fred C. Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements 7*, The Council of State Governments Justice Center (2009), https://csgjusticecenter.org/wpcontent/uploads/2015/09/Improving_Responses_to_People_with_Mental_Illnesses_at_the_Pretrial_Stage_Essential_Elements.pdf (accessed Jul. 30, 2019) (As of 2009, “approximately two million adults with serious mental illnesses are admitted into jails each year, about three-quarters of whom have co-occurring substance use disorders”).

⁵ Canterbury Testimony, *Charleston Briefing*, p. 114.

⁶ James R. Lee, testimony, *Charleston Briefing*, Aug. 14, 2015, transcript, pp. 52.

higher risk of re-incarceration.⁷ As the lock-them-up mentality has become widespread, funds were diverted from programs that could better serve mentally ill individuals to large prisons.⁸ This caused the prison population to skyrocket, leaving mentally ill individuals without needed treatment. Additionally, community release alternatives are limited, leaving few options besides the prison system for these individuals.⁹

B. Summary and Synthesis of Common Themes Presented by the Expert Panelists

Theme 1. The Criminal Justice System Is Not an Adequate Vehicle for Providing Services to Individuals with Mental Health Issues

The criminal justice system is primarily designed to control and deter crime through an intricate web of overlapping crime-fighting agencies that find, investigate, punish and rehabilitate those who break criminal laws.¹⁰ Given this complex design coupled with the increasing number of incarcerated individuals who present with mental health issues,¹¹ the Committee wondered whether the criminal justice system, as is, was an adequate vehicle for providing treatment for incarcerated individuals who present with mental health issues.

Incarcerated individuals with mental health issues are often traumatized by the criminal justice system from the moment they enter it. Even in situations where there is no resistance, the individual is still placed into handcuffs and given the “perp walk” through a hospital.¹² This publicly visible arrest creates the perception that mentally ill individuals are criminals, but oftentimes, their only crime is that these individuals have a disability or mental illness.¹³ Moreover, it reinforces the stereotype that mentally ill people are dangerous; yet this is true only of “a very tiny number of people.”¹⁴

⁷ Canterbury Testimony, *Charleston Briefing*, p. 116.

⁸ J. Lee Testimony, *Briefing Transcript*, p. 51.

⁹ Jason Nicholas, Assistant Public Defender, Division Supervisor for the Juvenile and Mental Hygiene Divisions, Kanawha County, Charleston, testimony, *Charleston Briefing*, Aug. 14, 2015, transcript, p. 36. (Mr. Nicholas was appointed to the West Virginia State Advisory Committee (WV SAC) in November 2015, after the hearing in this matter took place).

¹⁰ “U.S. Criminal Justice System, Intro to the American Criminal Justice System,” *CorrectionalOfficer.org*, <http://www.correctionalofficer.org/us-criminal-justice-system> (accessed October 5, 2019).

¹¹ Lauren Almquist & Elizabeth Dodd, “Mental Health Courts: A Guide to Research-Informed Policy and Practice,” *Council of State Governments Justice Center*, p. v, https://csgjusticecenter.org/wp-content/uploads/2012/12/Mental_Health_Court_Research_Guide.pdf (accessed Aug. 4, 2019).

¹² Robert Bernstein PhD, President & CEO, Judge David L. Bazelon Center for Mental Health Law, Washington, DC, testimony, *Charleston Briefing*, p. 72.

¹³ Bernstein Testimony, *Charleston Briefing*, p. 69–70; Canterbury Testimony, *Charleston Briefing*, p. 115.

¹⁴ Bernstein Testimony, *Charleston Briefing*, p. 72.

These individuals are often arrested for petty crimes and then sent to jail, thereby interrupting treatment or skipping a meaningful opportunity for much-needed treatment. While in jail, they are not properly diagnosed, cannot obtain appropriate medicine and generally cannot receive proper treatment. To make matters worse, “[f]orty percent of them are physically, sexually and emotionally abused while in prison.”¹⁵ Because incarcerated individuals with mental illness “can’t adhere to [prison] rules,” once incarcerated, these individuals stay in prison “28 percent longer” than those in the regular population,¹⁶ thereby extending the period during which they cannot receive appropriate treatment.

As of 2015, there are two treatment methods for incarcerated individuals who present with mental health issues: the mental hygiene process¹⁷ and uncontested commitment.¹⁸ The mental hygiene process is the process by which an adult can apply to have another individual involuntarily hospitalized if that adult believes the individual is addicted to a controlled substance or is mentally ill and likely to harm oneself or others. Under this process, the court may detain a person for a probable cause hearing to be held within 24 hours of the application; at the hearing, the judge will appoint legal counsel to the person detained and is likely to order a mental health examination of that person. The judge will also appoint a Mental Health Commissioner, (a WV attorney) to preside over the case. “If the court determines that there is probable cause, a person can be admitted to a mental health facility and an examination must take place within 5 days. If the examining physician determines that the person is a threat to themselves or others, a final commitment hearing must be instituted within 15 days.” Involuntary commitment to a mental health facility must be accompanied by a valid physician or psychologist judgment that the person is either “addicted to a controlled substance or mentally ill AND likely to cause harm to themselves or others.” Otherwise, the court will dismiss the case, commit the person to another responsible adult, admit the person to a treatment facility, or order release with an agreement that the person will seek treatment.¹⁹ The only further option is “uncontested commitment,” where individuals are committed, even though they do not actually require commitment, in order to receive the treatment they need.²⁰ This is true in both the adult and juvenile system, where children are often sent out of state because there may be no available mental hospital beds available near them.²¹

¹⁵ J. Lee Testimony, *Charleston Briefing*, p. 52.

¹⁶ J. Lee Testimony, *Charleston Briefing*, p. 52.

¹⁷ Nicholas Testimony, *Charleston Briefing*, p. 36.

¹⁸ Nicholas Testimony, *Charleston Briefing*, p. 36.

¹⁹ This entire paragraph is taken from the Legal Aid of WV website. See “MENTAL HYGIENE PROCESS: FAQ,” Legal Aid of West Virginia, <http://www.lawv.net/Resources/Self-Help-Library/Individual-Rights/Mental-Hygiene-Process-Frequently-Asked-Questions> (accessed Aug. 3, 2019).

²⁰ Nicholas Testimony, *Charleston Briefing*, p. 36.

²¹ Nicholas Testimony, *Charleston Briefing*, p. 37.

Given the limitations of these two options,²² the criminal justice system often becomes the nation's and West Virginia's actual mental health provider for incarcerated individuals. As a health provider, the criminal justice system is neither meeting the treatment needs of its patients nor is it adequately fulfilling its public justice function.²³ Regarding treatment needs, while the problems seem readily apparent, a general lack of data makes it difficult to accurately measure the scope of the number of mentally ill individuals in the criminal justice system.²⁴ Regarding fulfilling its justice function, the current approach does nothing to improve public safety²⁵ and the complex nature of the criminal justice system makes it exceedingly difficult for incarcerated individuals who present with mental health issues to be rehabilitated. Even when such individuals are released, complicated probation requirements make it nearly impossible for these individuals to stay out of the system, resulting in recidivism.²⁶ Without wrap-around services²⁷ to ensure that these individuals continue to get the treatment they need, they will often continue to return to a system that deteriorates their mental well-being.²⁸

Simply put, the system is overburdened, and the criminal justice system does not provide the tools these individuals need to succeed. As funds are continuously diverted away from community programs, jails will continue to be the lead provider of mental health treatment. Accordingly, mentally ill individuals will more likely be re-arrested and be placed back into a harmful system that only works to deteriorate their mental health.

²² The large influx of mentally ill individuals in the justice system has also created a strain on the mental hygiene process because that is often the only available treatment method.

²³ Merideth Smith, Ph.D., PSIMED Corrections, LLC, Charleston, WV, testimony, *Charleston Briefing*, p. 16. (Dr. Smith was appointed to the WV SAC in November 2015, after the hearing in this matter took place).

²⁴ Canterbury Testimony, *Charleston Briefing*, p. 114.

²⁵ Canterbury Testimony, *Charleston Briefing*, p. 112.

²⁶ Smith Testimony, *Charleston Briefing*, p. 39.

²⁷ The Transcript does not define wrap-around services. However, our research suggests that wrap-around services is a term that arose in the context of incarcerated juveniles who presented with mental health issues. In such cases, mental health experts recommended wrap-around services—"a process of organizing and coordinating service delivery for children and families with complex needs involved with multiple service providers"—to reduce recidivism rates. "These services might include clinical therapy, substance use treatment, special education, medication, care giver support, public assistance, employment, housing, medical healthcare, mentorship programs, transportation, and coordination of services with other sectors such as juvenile justice and child welfare." Michael D. Pullmann, Jodi Kerbs, Nancy Koroloff, Ernie Veach-White, Rita Gaylor, & DeDe Sieler, *Juvenile Offenders with Mental Health Needs: Reducing Recidivism Using Wraparound*, 52 CRIME & DELINQUENCY 375, 378 (2006).

²⁸ Andrea Cosans, Community Engagement Specialist and Crises Worker, East Ridge Health Systems, Martinsburg, WV, testimony, *Charleston Briefing*, p. 41 (Similarly, forensic assertive community treatment—a form of community-based, multidisciplinary treatment—is considered a best practice for individuals with serious mental illness, substance use, and criminal justice involvement.); *see also* "Forensic Assertive Community Treatment (FACT): A Service Delivery Model for Individuals With Serious, Mental Illness Involved With the Criminal Justice System," Substance Abuse and Mental Health Services Administration, https://store.samhsa.gov/system/files/508_compliant_factactionbrief_0.pdf (accessed October 5, 2019).

Theme 2. Mental Health Courts Have Proven Significant in Reducing Recidivism Rates

West Virginia is not unique in using the criminal justice system as its actual mental health provider.²⁹ One response to this crisis has been the development of Mental Health Courts, “a special court program that diverts non-violent criminal offenders diagnosed with mental illness from the criminal justice system into treatment.”³⁰ This program commenced in 1997 with four courts and has grown to over 300 courts across the United States.³¹ At the time of the hearing, WV had only one mental health court—in the First Judicial Circuit, located in Wheeling, WV.³²

According to the Council of State Governments Justice Center, Mental Health Courts must include ten essential elements.³³ These are as follows:

- 1) **Planning and administration:** “A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.”³⁴
- 2) **Target Population:** “Eligibility criteria address public safety and consider a community’s treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also consider the relationship between mental illness and a defendant’s offenses, while allowing the individual circumstances of each case to be considered.”³⁵

²⁹ Smith Testimony, *Charleston Briefing*, p. 16 lines 19–22 (explaining that “[m]ental health is a public health crisis, and the criminal justice system really has become the defacto mental health provider”).

³⁰ Tara Martinez, introduction, *Charleston Briefing*, p. 6. (Although Ms. Martinez served as Vice Chair of the WV SAC at the time of the hearing, she currently serves as its chair. At the time of the hearing, WV had only one mental health court—in the First Judicial Circuit, located in Wheeling, WV); Almquist & Dodd, *supra* note 1, (defining mental health court as “a court with a specialized docket for certain defendants with mental illnesses” (accessed Aug. 4, 2019); *see also* “Mental Health Courts: A Primer for Policymakers and Practitioners,” Council of State Governments Justice Center (2008), <https://csgjusticecenter.org/wp-content/uploads/2012/12/mhc-primer.pdf> (accessed Aug. 4, 2019).

³¹ “Mental Health Courts,” Council of State Governments Justice Center, <https://csgjusticecenter.org/mental-health-court-project/> (accessed Aug. 3, 2019).

³² Martinez Introduction, *Charleston Briefing*, p. 6.

³³ Mental Health Consensus Project “Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court,” Council of State Governments Justice Center, <https://csgjusticecenter.org/wp-content/uploads/2012/12/mhc-essential-elements.pdf/>, (accessed Aug. 3, 2019) (distinguishing between mental health courts for adults and juveniles and focusing on adult courts).

³⁴ Mental Health Consensus Project, *supra* note 2.

³⁵ *Ibid*, p. 3.

- 3) **Timely Participant Identification and Linkage to Services:** “Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.”³⁶
- 4) **Terms of Participation:** “Terms of participation are clear, promote public safety, facilitate the defendant’s engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.”³⁷
- 5) **Informed Choice:** “Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant’s competency whenever they arise.”³⁸
- 6) **Treatment Supports and Services:** “Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use—and increase the availability of—treatment and services that are evidence-based.”³⁹
- 7) **Confidentiality:** “Health and legal information should be shared in a way that protects potential participants’ confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants’ court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.”⁴⁰
- 8) **Court Team:** “A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.”⁴¹
- 9) **Monitoring Adherence to Court Requirements:** “Criminal justice and mental health staff collaboratively monitor participants’ adherence to court conditions,

³⁶ Ibid.

³⁷ Ibid., p. 4.

³⁸ Ibid., p. 5.

³⁹ Ibid., p. 6.

⁴⁰ Ibid., p. 7.

⁴¹ Ibid., p. 8.

offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery."⁴²

- 10) **Sustainability:** "Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded."⁴³

The state of West Virginia will continue to struggle to solve its mental health crisis without establishing more mental health courts.⁴⁴ "In West Virginia, one in every five people suffer from some form of mental illness. 182,000 West Virginians with mental illness have been in [the] prison system."⁴⁵ With the exception of the first judicial circuit, jurisdictions in West Virginia utilize their criminal justice system to process individuals with mental health issues, which is neither cost efficient nor effective insofar as it does not lower recidivism rates.⁴⁶

Empirical evidence suggests that creating more mental health courts would be the most effective means for providing incarcerated individuals who present with mental health issues the support they need to keep them out of prison.⁴⁷ States that use mental health courts experience lower

⁴² Ibid., p. 9.

⁴³ Ibid., p. 10.

⁴⁴ In response to WV SAC Vice Chair Martinez's question regarding the benefits of mental health courts, Quewanncii (Que) C. Stephens, Sr., Aftercare Supervisor, Division of Juveniles Services, WV Division of Military Affairs & Public Safety, Charleston, WV, and Mr. Nicholas commented. *See* Que Stephens, testimony, *Charleston Briefing*, p. 36 ("I think it would allow pre-trial diversion instead of incarceration"); Nicholas Testimony, *Charleston Briefing*, p. 36 ("I actually spoke to our chief defender about this during a phone conference. That is something that we would be very interested in seeing, at least try to expand it, maybe a pilot program here in Kanawha County).

⁴⁵ J. Lee Testimony, *Charleston Briefing*, p. 52, lines 8–11.

⁴⁶ Canterbury Testimony, *Charleston Briefing*, p. 114 line 8 to p. 115 line 7.

⁴⁷ Sarah Wittig Galgano, Senior Associate, Pew-MacArthur Results First Initiative—The Pew Charitable Trusts, Washington, DC, testimony, *Charleston Briefing*, p. 66 line 24 to p. 67 line 3 ("But what we do know, based on the literature, is that when implemented with fidelity, so including those key components of treatment, intensive case supervision and management, and monitoring, mental health courts are extremely effective at reducing recidivism"); Galgano Testimony, *Charleston Briefing*, p. 66 lines 11–18 ("Controlling for all of that uncertainty and running some analysis to handle it, they estimated that mental health courts yield a positive rate of return, one hundred percent of the time. So you can expect one hundred percent of the time that for every dollar you put into mental health courts, your benefits are going to be greater than that dollar."). *See also* Almquist & Dodd, *supra* note 3 ("Research strongly suggests that mental health court participants have lower rates of new criminal charges while under court supervision than individuals with mental illnesses who go through the traditional criminal court system. There is some empirical evidence to support the belief that this trend may continue after graduation, when individuals are no longer supervised by the court.").

recidivism⁴⁸ rates, which in turn allows those states to save a great deal of money.⁴⁹ West Virginia’s most well-known mental health court operates in the northern panhandle of the state.⁵⁰ The Committee was told that the mental health court had been operating since 2015; the program graduated 224 participants and had a zero criminal recidivism rate for all 224 participants one year after graduation.⁵¹

In 2014, West Virginia partnered with the Pew Charitable Trust’s “Results First Initiative” to create a model of the adult criminal justice system in West Virginia to determine the cost of mental health courts in the state, and the benefit of expected return.⁵² Because the Results First Initiative had only recently been introduced at the time of the Panel meeting, the model had not been completed in the state. This information can likely be accessed soon to provide a complete picture on the costs and benefits of mental health courts in the state.⁵³

Theme 3. Law Enforcement Agents Believe that Increased and Continued Training and Education, Focusing on How To Handle Situations Involving Mentally Ill Individuals, Would Be Beneficial Because It Would Ultimately Reduce Police Encounters with These Individuals

Whether or not the criminal justice system continues to be the actual vehicle for servicing incarcerated individuals who present with mental health issues, increased and continued training and education of law enforcement and corrections officers on how to handle situations that involve individuals with mental health issues is needed. Furthermore, better statistics are needed for mental health issues in law enforcement interaction.

When mental health courts were first established in West Virginia, training was done including police training, which was effective in educating and empowering individuals to take action in the

⁴⁸ The West Virginia Code defines recidivism as a “subsequent arrest for a serious offense carrying a sentence of at least one year.” W. Va. Code § 62-15-2.

⁴⁹ Galgano Testimony, *Charlestown Briefing*, p. 66, lines 24–26; p. 67, lines 1–18.

⁵⁰ Linda Richmond Artimez, Director of Mental Hygiene Services & Mental Health/Veterans Treatment Courts, West Virginia Supreme Court of Appeals, Charleston, WV, testimony, *Charleston Briefing*, p. 55, lines 9–12.

⁵¹ Artimez Testimony, *Charleston Briefing*, p. 55, lines 22–26; p. 56, lines 1–26; p. 57, lines 1–9.

⁵² “The Pew-MacArthur Results First Initiative in West Virginia, Fact Sheet,” Pew Charitable Trusts (Aug. 13, 2014), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/08/the-pewmacarthur-results-first-initiative-in-west-virginia> (accessed October 5, 2019).

⁵³ “The Pew-MacArthur Results First Initiative in West Virginia, Fact Sheet,” Pew Charitable Trusts (July 2018), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/08/the-pewmacarthur-results-first-initiative-in-west-virginia> (accessed October 5, 2019).

community.⁵⁴ There is no uniformity to mental health training for law enforcement officers throughout the state except at entry level, and no mandatory training beyond that.⁵⁵

Many law enforcement officers, who often encounter and arrest individuals with mental health issues, want more training so that they (1) better understand how to help the individuals who present with mental health issues and (2) better understand the process.⁵⁶ The courts, police, and mental health service providers need a plan to reduce police encounters with individuals with mental health issues, but there is no blueprint for dealing with the issues.⁵⁷ Correctional staff need the ability to identify and interact with individuals with mental health issues to assist them in getting help and to provide a safe environment.⁵⁸

The West Virginia Division of Justice and Community Services uses Level of Service Case Management Inventory (LSCMI) results and other information pertaining to case management and supervision for programming and case planning.⁵⁹ Those who score high on the LSCMI present with substance abuse problems.⁶⁰ This assessment provides a better understanding of the population and the prevalence of various mental health issues.⁶¹ At times, assessors in the intake process lack access to mental health records and must rely solely on self-reporting from the client.⁶² There is also a dearth of data about incarcerated adults with mental health issues and co-occurring disorders at the time they are admitted to jail.⁶³

⁵⁴ Artimez Testimony, *Charleston Briefing*, pp. 78–80. (Although the testimony is unclear, it appears that the training was conducted by Mental Hygiene Services and Mental Health, Veterans Treatment Courts, West Virginia Supreme Court of Appeals).

⁵⁵ Joseph Ciccarelli, Chief, Huntington Police Department, Huntington, WV, testimony, *Charleston Briefing*, pp. 186–87.

⁵⁶ Cosans Testimony, *Charleston Briefing*, p. 23.

⁵⁷ Bernstein Testimony, *Charleston Briefing*, pp. 95–96.

⁵⁸ Smith Testimony, *Charleston Briefing*, p. 17.

⁵⁹ Stephen M. Haas, Ph.D., Director, Office of Research and Strategic Planning, WV Division of Criminal Justice Services, Charleston, WV, testimony, *Charlestown Briefing*, pp. 99–101.

⁶⁰ Haas Testimony, *Charleston Briefing*, pp. 102–03.

⁶¹ *Ibid.*, p. 99–101.

⁶² *Ibid.*

⁶³ Randall Thyse, Federal Bureau of Investigations—Operational Programs Branch Criminal Justice Information Services Division, Clarksburg, WV, testimony, *Charlestown Briefing*, p. 113.

The best predictor of recidivism is a high score on the Harris Psychopathy Index.⁶⁴ Most repeat offenders are individuals with mental health issues who are not getting treatment.⁶⁵ These individuals may not be legally responsible for the criminal acts they commit, and some may be inaccurately diagnosed as mentally ill.⁶⁶ Clear distinctions must be made between different types of disorders.⁶⁷ Like the general public, law enforcement officers may choose to avoid individuals with mental health issues, or may feel that they are in need of help.⁶⁸ Law enforcement officers want to be trained, and there was good response to Crisis Intervention Training (CIT), but then officers did not want more training, believing it would not be any different.⁶⁹ Law enforcement officers want training, so they feel more comfortable in assessing whether an individual has a problem, if there is a threat, and whether there is access to assistance, so then they can take action.⁷⁰

Theme 4. Substance Abuse Treatment Must Address Mental Health Issues, Although the Criminal Justice System Should Not Conflate Treatment for One as Treatment for Both

Although not highlighted at the August 2015 Hearing, West Virginia continues to struggle with a statewide drug problem.⁷¹ There are many factors as to why West Virginia has an ongoing opioid epidemic including the impoverished condition of the state, the fact that millions of pills have been funneled into small towns,⁷² and over prescription,⁷³ coupled with the fact that the state's ruralness can act as a barrier to those who seek treatment.⁷⁴ West Virginia's high substance abuse rate correlates with its high mental illness rates.⁷⁵ "In West Virginia, one in every five people suffer

⁶⁴ David A. Clayman, Ph.D., Clayman Associates, Clinical and Forensic Psychology, Charleston, WV, testimony, *Charleston Briefing*, pp. 154–56.

⁶⁵ *Ibid.*, 154–56.

⁶⁶ *Ibid.*.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ See Courtney Hessler and Eric Eyre, "Judge Clears Way for Opioid Data Release," *Herald-Dispatch* (Jul. 16, 2019), https://www.herald-dispatch.com/_recent_news/judge-clears-way-for-opioid-data-release/article_54458d24-a82b-11e9-b39d-dfe2ff8ec980.html

⁷² *Ibid.*

⁷³ See "Second Appalachian Region Prescription Opioid Strikeforce Takedown Results in Charges Against 13 Individuals, Including 11 Physicians," *U.S. Department of Justice, Office of Public Affairs, Justice News* (Sept. 24, 2019), www.justice.gov/opa/pr/second-appalachian-region-prescription-opioid-strikeforce-takedown-results-charges-against-13 (accessed October 5, 2019).

⁷⁴ Smith Testimony, *Charleston Briefing*, p. 43, lines 7–10.

⁷⁵ *Ibid.*, p. 43 lines 5–17.

from some form of mental illness.”⁷⁶ The correlation between substance abuse and mental illness occurs throughout the nation; however, the criminal justice system often only treats one or the other.⁷⁷ For this reason, a combined approach that seeks to treat both mental illness and substance abuse would be more effective at treating these individuals, and ensuring that a major contribution to their criminality does not go unaddressed.

There are not enough treatment options for substance abuse in West Virginia.⁷⁸ As of 2015 West Virginia operated a mental hygiene petition process where individuals believed to be suffering from a mental health crisis could be committed to an inpatient treatment program, via a petition by another individual.⁷⁹ Individuals will frequently use the mental hygiene petition process to try to find inpatient treatment options for those who suffer from substance abuse.⁸⁰ While mental health issues and substance abuse problems are often conflated, the use of the mental health hygiene petition to remedy a problem such as substance abuse ultimately overloads an already stressed system.

In addition to the lack of treatment options for incarcerated individuals with a substance abuse problem, there is also a dearth of options for incarcerated individuals who present with both substance-abuse and mental-health issues.⁸¹ As of 2015, there were twelve drug courts operating in the state, but only one mental health court.⁸² When the mental health court was first established, the hopes of those in charge were to include substance abuse services as an extension of the court. This would have been cost-effective and could have helped officials better understand the unhealthy relationship between substance abuse and mental illness. As the first circuit drug court learned, forty to sixty percent of offenders who were referred to that court had a mental illness.⁸³ The court after removing drugs from the picture was then able to refer that forty percent to the associated mental health court.⁸⁴

⁷⁶ J. Lee Testimony, *Charleston Briefing*, p. 52 lines 8–11.

⁷⁷ Smith Testimony, *Charleston Briefing*, p. 43, lines 5–8.

⁷⁸ Artimez Testimony, *Charleston Briefing*, p. 62 lines 8–13; Nicholas Testimony, *Charleston Briefing*, p. 37 lines 9–21.

⁷⁹ Nicholas Testimony, *Charleston Briefing*, p. 9 lines 8–14.

⁸⁰ Ciccarelli Testimony, *Charleston Briefing*, p. 149 lines 18–26, p. 150 lines 1–12.

⁸¹ Artimez Testimony, *Charleston Briefing*, p. 62 lines 8–13; Nicholas Testimony, *Charleston Briefing*, p. 37 lines 9–21 (“In the juvenile context, I have many, many clients that are sent to out of state facilities because there are no available treatment options for them in the state, at an outrageous cost, you know, \$150,000 to \$170,000 a year to send someone out of state for treatment, because we don’t have what they need. . . . And that is why in my opinion the system as it is right now is unsustainable, because we don’t have what we need in the system to make it work. We need more community health providers, and we need more connections between the criminal justice system and the mental health system.”).

⁸² Artimez Testimony, *Charleston Briefing*, p. 82 lines 12–17.

⁸³ Smith Testimony, *Charleston Briefing*, p. 31.

⁸⁴ *Ibid.*

The expert panelists seemed to agree that West Virginia can better combat its substance abuse problems by offering mental health services in addition to drug treatment programs.⁸⁵ Drug courts and mental health courts have been shown to be successful in the northern panhandle, so the establishment of more mental health courts in the state is an avenue that could be explored.⁸⁶ In addition, the introduction of more mental health courts can take pressure off the mental hygiene process, and keep it reserved for mental health crises.⁸⁷

Theme 5. Community-based Care Would Enhance West Virginia’s Approach to Treating Incarcerated Individuals with Mental Health Issues Because Such Care Can Alleviate the Burden Placed on the Criminal Justice System

Community-based care would enhance West Virginia’s approach to mental health treatment. The use of community-based care alleviates the burden currently placed on the criminal justice system and will help to keep individuals with mental health issues out of the criminal system. However, more funding is needed to provide this type of care.

At the August 2015 Hearing, Robert Bernstein stated that during the 1970s, the federal government convened a mental health commission that built upon the requirements for community mental health, which provided a whole array of services, ranging from prevention and community education to research services that would make a significant difference in terms of what the community system looked like and how responsive it would be to community mental health issues.⁸⁸ Thereafter, in the 1980s, the federal government provided general block grants instead, which meant that states were free to use the funds however they wanted.⁸⁹

Panelist Linda Artimez explained that West Virginia is near the bottom of the list when it comes to states and mental health statistics, and the state could turn itself around if it had sufficient community supports, wrap-around services, intensive outpatient, and voluntary inpatient available.⁹⁰ Both Ms. Artimez and another panelist Andrea Cosans suggested that West Virginia

⁸⁵ Artimez Testimony, *Charleston Briefing*, p. 62 lines 8–13; Smith Testimony, *Charleston Briefing*, p. 43 lines 5–8.

⁸⁶ J. Lee Testimony, *Charleston Briefing*, p. 83–84.

⁸⁷ Captain David Lee, Director of Training, WV State Police Dunbar, WV, testimony, *Charleston Briefing*, pp. 149–50.

⁸⁸ Bernstein Testimony, *Charleston Briefing*, pp. 89–91.

⁸⁹ *Ibid.*

⁹⁰ Artimez Testimony, *Charleston Briefing*, p. 88–89.

implement voluntary treatment programs within the communities so that people can get the help they need, without unnecessarily interacting with the criminal justice system.⁹¹

Community-based care could address several important issues regarding incarcerated individuals with mental health problems. First, it would remove the public visibility of arrest, thereby reducing the individual's shame and trauma while also decoupling the public stereotype that the mentally ill are criminally dangerous.⁹² Second, it would remove the situation that some experience that incarceration is the only means to a better life.⁹³ Third, community-based treatment or assistance, would alleviate some of the pressure put on those in the criminal justice system. The big question, however, is whether this can be accomplished. Panelist Merideth Smith suggested tele-medicine, which can be delivered by the professionals, not necessarily in hospitals or treatment centers, and coordinating with community groups.⁹⁴

C. Panelists' Observations and Conclusions

The expert panelists agreed on the following observations:

1. The WV criminal justice system is overburdened with increasing numbers of individuals with mental health issues.
2. The WV criminal justice system generally lacks the tools necessary to treat incarcerated individuals with mental illness.
3. A lack of data makes it difficult to accurately measure the scope of the number of mentally ill individuals in the criminal justice system.
4. As funds are continuously diverted away from community programs, jails will continue to be the lead provider of mental health treatment.
5. The Mental Hygiene Process is the main process in WV by which incarcerated individuals can receive treatment for mental illness, but that process, too, is overburdened.
6. Mentally ill individuals who are untreated while incarcerated are likely to be re-arrested.

⁹¹ Artimez Testimony, *Charleston Briefing*, p. 62 lines 8–13; Cosans Testimony, *Charleston Briefing*, p. 22 lines 18–20.

⁹² Bernstein Testimony, *Charleston Briefing*, p. 72.

⁹³ For example, some individuals in Broward County, Florida, felt that the mental health courts, and thus being arrested, was the best thing to ever happen to them in their lives. See Bernstein Testimony, *Charleston Briefing*, pp. 69–71.

⁹⁴ Smith Testimony, *Charleston Briefing*, p. 43.

7. Research strongly suggests that Mental Health Courts reduce recidivism rates in individuals who present with mentally illness or addiction.
8. There is a dearth of options for incarcerated individuals who have mental health issues, especially when those health issues coincide with substance abuse. Both mental health and substance abuse issues need to be treated separately and not conflated as one disease.
9. More training of actors in the criminal justice system is needed to identify and properly handle individuals with mental health issues.
10. Holistic care is needed to help these individuals, which in turn will reduce recidivism. This may include community-based care, wrap-around services, and treatment for the specific mental health issue, including addiction treatment.

D. Legislative Update

Recently the West Virginia Legislature passed legislation to reestablish Veterans Treatment Courts in the state.⁹⁵ These veteran courts will largely function in the same manner as a mental health court would by offering services such as drug treatment programs and counseling.⁹⁶ The northern panhandle mental health court previously had a Veterans Court component, but it was abolished in 2017 due to budgetary concerns.⁹⁷ As of August 2019, West Virginia had reestablished the northern panhandle Veterans Court under this new law with plans to create additional courts.⁹⁸

E. Issues for Future Study

The August 2015 Hearing left open the following questions:

1. Whether, how, and to what extent increasing data collection would help experts more adequately address this problem?

⁹⁵ The Military Service Members Court Act, S. 40, Leg., 2019 Reg. Sess. (W. Va. 2019).

⁹⁶ *Id.*

⁹⁷ Joselyn King, “West Virginia Sen. Ryan Weld Will Push for Return of Veterans Court,” *The Intelligencer & Wheeling News-Reg.* (Dec. 7, 2018), <https://wvpress.org/breaking-news/west-virginia-sen-ryan-weld-will-push-for-return-of-veterans-court/> (The August 2015 Transcript reflects the fact that there is one Veterans Court in the northern panhandle). See J. Lee Testimony, *Charleston Briefing*, p. 54 lines 9–18. (According to Lee, there was a need in WV to expand those specialized courts. The August 2015 Transcript also reflects discussion about potential legislation regarding Veterans courts but provides no details); See D. Lee Testimony, *Charleston Briefing*, p. 76–77, lines 17–28, 1–23.

⁹⁸ Jaime Baker, “Judge Looking Forward to Working with Veterans Court,” *WTOV FOX* (Aug. 26, 2019), <https://wtov9.com/news/local/judge-looking-forward-to-working-with-veterans-court> (accessed October 5, 2019).

2. What is the difference between the mental hygiene process and the involuntary commitment process in West Virginia?
3. How different are these processes from their counterparts in other states? If very different from their counterparts, is it recommended that West Virginia change its process to come more in line with the processes of other states?
4. Is there a difference in recommended treatment for juveniles and adults? If so, what are those differences? What ages are associated with juvenile treatment as opposed to adult treatment?
5. Is there a difference in recommended treatment for veterans and nonveterans? If so, what are those differences?
6. Has WV expanded the number of mental health courts? If so, where are these courts located? What has been WV's experience with these courts?
7. What is the difference between mental health courts and drug courts? Are there veterans' courts?
8. What are the pros and cons of combining these courts and keeping them separate?
9. At the time of the hearing, information gained by a 2014 partnership between West Virginia and the Pew Charitable Trust's "Results First Initiative" regarding the cost of mental health courts in WV and the benefit of expected return was expected soon. What were the results of that project?
10. What is the difference between wrap-around services and community-based care?

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