

2020 Framework for Prosecution & Public Health



FEBRUARY 2021





20 PRN SUMMIT 20

2020 Framework for Prosecution and Public Health

On July 13 and 14, 2020, the Prosecution Research Network was convened virtually for the purpose of identifying research and policy strategies to improve health, reduce incarceration, and increase national safety, prosperity, and wellbeing.

IN CONCLUSION, PROSECUTION RESEARCH NETWORK MEMBERS DECLARE THE FOLLOWING:

The United States is in the midst of a poorly understood public health crisis. Americans with mental health needs of all kinds (including substance use disorders) are neglected, stigmatized, or inadequately supported by health and safety systems which can more effectively optimize successful human development and outcomes. Improving access and coordinating interventions across systems will prevent premature death, injury, long-term disability, and many other threats to public safety and wellbeing.

The nation's response to health needs too often defaults to the criminal justice system.

Relying on the criminal justice system to respond to the chronic and acute health needs of the population is neither appropriate, nor healthy, nor sound fiscal policy. This reliance upon justice system intervention for unaddressed health needs is a wasteful misapplication of resources and yields extremely poor health and safety outcomes at tremendous cost to individuals, communities, and the economy at large.

Our nation's public health, public safety, and economic wellbeing are inextricably intertwined. A resolution to this devastating crisis demands more therapeutic approaches to mental and behavioral health and a rebalancing of community investment. If done correctly, investments in affordable and supportive housing, and preventative and supportive health care can reduce the need for spending on incarceration and courts. Where justice system involvement has already begun, diversion into restorative programs and out of the criminal system should be available at all points along the system, favoring the earliest interventions and preventing further contact with the system wherever possible. These shifts are likely to yield long term savings and economic growth, as well as enhanced public health and safety, and positive individual outcomes.

Therefore, we recommend the following course corrections as a framework for research and policy innovations led by prosecutors' offices, in partnership with health care providers and stakeholders concerned with managing the health of our populations:

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PRE-CHARGE



TYPE OF DIVERSION/ DEFERRED PROSECUTION	PROBLEM SOLVING FOR	CRITICAL COMPONENTS TO SOLVE PROBLEM	OUTCOMES
<p>PRE-CHARGE</p>	<ul style="list-style-type: none"> • Over-reliance on confinement • Restricting liberty (via confinement in jail or community supervision) because of symptoms of health problems (i.e., mental health and substance use disorders) • Restricting liberty (people who are not a threat to public safety, they are a threat to themselves) 	<ul style="list-style-type: none"> • Preserve liberty whenever possible as a priority • Aim to identify the least restrictive justice response • Discernment of whether the health needs outweigh criminality. If health needs are greater, then the defendant should go to a health-based environment • Defendants treated with compassion and respect and with presumption of innocence; and with the presumption that they may have health needs that are driving their involvement with the courts • Prosecutors obtain the conceptual disposition, but they should not be expected to be the ones that evaluate a defendant's health needs and make a determination. Prosecutors' offices should have the appropriate staffing and resources including staff with the clinical training to assess health needs 	<ul style="list-style-type: none"> • Improved psychological, social, economic well-being within individuals and family ecosystems • Enhanced respect for the law and the justice system • Enhanced participation in and expectations of diversion/deferral programs • Improved connections to care – create pathways to care that defendants may not have had before • Early identification of mental health and substance use needs which may be the first time a defendant had insight into need for health care • Improved individual likelihood of long-term stability and recovery • Improved multi-generational health impacts because of healthcare needs being addressed • Lesser court involvement

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PRE-PLEA/POST-CHARGE



TYPE OF DIVERSION/ DEFERRED PROSECUTION

PROBLEM SOLVING FOR

CRITICAL COMPONENTS TO SOLVE PROBLEM

OUTCOMES

PRE-PLEA/ POST-CHARGE

- Justice system “net” too wide currently
- Correctional violations substantially contribute to recidivism and incarceration rates due to onerous requirements
- Public health / individual health needs are better addressed in the community than in jail because jails are rarely able to provide adequate healthcare and confined environments can exacerbate health symptoms

- Establish that the defendant has enough competence to be “corrected” in diversion/deferral program (essentially that expectations are not being set that defendants cannot meet because of health disorder)
- Assess likelihood of correctional violations due to onerous requirements (albeit often unintentionally) and remove onerous requirements
- Implement a program that aims to look for opportunities to help people succeed
- Assess for trauma symptoms related to arrest and jail and provide rehabilitation resources if needed. Trauma symptoms are important to treat because trauma can lead to impulsivity, aggression, and other factors that have the potential to lead to criminality
- Evaluate whether adequate health care (e.g., appropriate psychotropic medications) was provided to the individual in jail and give people the opportunity to perform in community-based health care prior to determining non-compliance because compliance may be related to the limitations inherent in jail-based healthcare

- Increased scenarios in which charges get dropped
- Reductions in caseloads for prosecutors
- Increased resources to prosecute crime drivers and defendants that pose significant threats to public safety
- Improved connections to care – create pathways to care that defendants may not have had before
- Early identification of mental health and substance use needs which may be the first time a defendant had insight into need for healthcare
- Defendants experience greater community stability and reintegration such as adequate social supports (formal and informal); connections with social safety nets; housing; and employment stability

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POST-PLEA



TYPE OF DIVERSION/ DEFERRED PROSECUTION	PROBLEM SOLVING FOR	CRITICAL COMPONENTS TO SOLVE PROBLEM	OUTCOMES
<p>POST-PLEA</p>	<ul style="list-style-type: none"> • Criminal justice involvement creates a vicious cycle of stigma, demoralization, and hopelessness for most • Hopelessness reduces likelihood of long-term recovery and conditions are more coercive than “corrective” • A person’s entire ecosystem can go awry as soon as they spend one night in jail • Highest risk for suicide is the first 24 hours of incarceration 	<ul style="list-style-type: none"> • Establish that the defendant has enough competence to be “corrected” in diversion/deferral program (essentially, that expectations are not being set that defendants cannot meet because of health disorder) • Incentivize programming using expungement, sealed records, or certificates of rehabilitation • Prosecutors feel confident in their ability to identify quality public health resources • Prosecutors feel more confident in their understanding of mental health / substance use disorders 	<ul style="list-style-type: none"> • Increased number of defendants who successfully complete the post plea diversion programs • More resources directed towards a more public health oriented system • Improved racial, economic, and health equity among defendants • Reductions in prosecutor caseloads and the incarcerated population

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REENTRY



REENTRY

PROBLEM SOLVING FOR

CRITICAL COMPONENTS TO SOLVE PROBLEM

OUTCOMES

- Responds to the acknowledgement that what happens during prosecutorial decision-making will influence a defendant's reentry success
- Underscores the power of prosecution to champion restorative justice versus solely to punish
- Recidivism rates are too high, indicating systems failure
- Families are split up by incarceration and reentry considerations can help create healthful family ecosystems

- Provide in-office resources for reentrants to link to health, employment and other community based supportive services such as re-housing, education, voter registration, and life skills
- Offer a one-stop reentry center that provides access to housing, employment, and legal services as well as assessment

- Increases in one-time court contact versus multiple court contact
- Improved well-being of the defendant, their family, and the community.
- Increased public safety.

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PROSECUTORIAL ROLE



PROSECUTORIAL ROLE IN COMMUNITY



PROBLEM SOLVING FOR

- Community members and some system actors have become jaded to the impact of incarceration on a human life
- Health is not being owned by the public health system – it is owned by the criminal justice system
- Healthcare in correctional settings is often privatized and (unintentionally) incentivized to deny care or provide inadequate care.
- Not enough housing and preservation of people in existing housing. Limited enforcement of anti-discriminatory rental practices
- Prosecutor resources disproportionately directed to justice management of individuals with health needs, rather than individuals involved in white-collar and other higher crimes against the public welfare.

CRITICAL COMPONENTS TO SOLVE PROBLEM

- Prosecutors can communicate a message to law enforcement that law enforcement avoid arrest whenever possible, which in turn, will help to establish public trust in diversion at initial encounter
- Re-enforce for law enforcement that the goal is to deescalate and stabilize with a concern for the individual's life first
- Re-enforce the Land of Liberty – people are presumed innocent
- Weighing public safety and needs for a justice system - prioritize the rights and needs of the individual unless we need to detain them
- Prosecutors have the opportunity to be more vocal about needing more, and quality, resources for health to point people to while also acknowledging that health care is not the role of the criminal justice system. At the same time, prosecutors have a constitutional duty to consider health in their decision making
- Prosecutors have a role as leaders to direct people toward more appropriate health providers
- Prosecutors have the opportunity to familiarize themselves with the laws that hold healthcare systems accountable enforce health care provider standards/behaviors/expectations (e.g. Medicaid violations)
- Prosecutors can be advocates for housing and fair housing practices by enforcing anti-discriminatory rental practices and predatory lending
- Prosecutor advocacy for improvement to the corrections system such as the opportunity to evaluate conditions of confinement individuals are exposed to and be able hold those accountable who mishandle people
- Prosecutors have trusting relationships with community providers – prosecutors can hold community service providers accountable for providing quality and evidence driven services
- Prosecutors need to feel shielded from community reproach

OUTCOMES

- Increased confidence and trust from community members
- Increased confidence that the right people are behind bars
- Expediency to trial and case resolution
- Adequate housing to meet the needs of all community members/residents and improved quality of public spaces
- Greater public health and health equity as a result of an adequate and responsive health system
- Improved conditions of confinement for those who must still serve a sentence incarcerated
- Community members vote towards reform-oriented prosecutors



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Our mission at the **Institute for Justice Research and Development (IJRD)** is to advance science, policy, and practice to improve the well-being of individuals, families, and communities impacted by criminal justice system involvement. IJRD prioritizes the rapid dissemination of research findings to advocates, professionals, and policymakers who can adopt them.

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We invite you join us and learn more at <https://ijrd.csw.fsu.edu>.



The Equitas Project, a national initiative of Mental Health Colorado, made possible thanks to the generous support of the David and Laura Merage Foundation, envisions an America rededicated to liberty and justice for all, where there is a commonly held expectation that jails and prisons should not continue to serve as the nation's warehouses for people with unmet mental health needs.

Mental Health Colorado is the state's leading advocate in promoting mental wellness, ending

shame and discrimination, and ensuring equitable access to mental health and substance use care. Mental Health Colorado is a nonprofit, nonpartisan organization and an affiliate of Mental Health America. To learn more about Mental Health Colorado's work and mission, visit www.mentalhealthcolorado.org.

For Equitas' work and mission, please visit www.equitasproject.org

