

To reduce incarceration, criminal justice advocates must call for mental health officials to end policies that offload the seriously mentally ill to prisons and jails.

We have two mental health systems today, serving two mutually exclusive populations: Community programs serve those who seek and accept treatment. Those who refuse, or are too sick to seek treatment voluntarily, become a law enforcement responsibility. . . . [M]ental health officials seem unwilling to recognize or take responsibility for this second more symptomatic group.” —Chief (Ret.) Michael Biasotti, former President, NYS Association of Chiefs of Police.

CJ efforts (ex. CIT, Stepping Up, Right on Crime, Vera, etc.) focus on improving how criminal justice systems interact with mentally ill after criminal involvement (ex. CIT, MH courts, forensic parole, competency restoration, etc.). But CJ officials have let mental health officials off the hook for embracing policies that offload the mentally ill to CJ. Here are some ideas how mental health officials can keep mentally ill away from incarceration. Reforming the mental health system and forcing it to focus on the most seriously ill should be an important part of crime reduction initiatives.

State level mental health reforms that would lower use of prisons and jails

- Increase number of long-term state hospital beds, local hospital beds, and housing options for seriously ill.
- Make civil commitment easier by broadly defining the “dangerousness” standard and adding “need for treatment” and “grave disability” civil commitment standards to law
- Increase use of Assisted Outpatient Treatment so seriously ill stay in treatment when in the community
- Combine involuntary commitment hearing with involuntary treatment hearing so we are not committing those we can’t treat. Require judges to consider past history of patient when making involuntary commitment determinations
- Implement a “Guilty and Mentally Ill” statute as alternative to guilty, not-guilty and NGRI. GAMI would sentence (commit) people to treatment for the maximum amount of time they would have been sentenced if found guilty. Courts could move people between inpatient and outpatient commitment (and back) as needed with no further due process.
- Allocate housing to mental health courts
- Screen involuntarily committed patients and mentally ill prisoners prior to discharging them and arrange for services. They are the most likely to recidivate if not provided treatment.
- Create clubhouses, ACT Teams, and congregate housing facilities
- Highlight that violence is an issue that needs addressing, in spite of mental health industry’s desire to downplay it.

Federal level mental health reforms that would lower use of prisons and jails

- Replace Paolo de Vecchio, as head of Center for Mental Health Services (CMHS) with MD who will focus on SMI.
- Eliminate IMD Exclusion which prevents states from using Medicaid for psychiatric hospitalization.¹
- Advocate to allow Medicaid funds to be used for court cost of AOT.
- Eliminate 190-day cap on psychiatric hospitalization in Medicare so it can pay for psychiatric hospitalization²
- Reign in or eliminate the Protection and Advocacy for Individuals with Mental Illness (PAIMI/P&A/Disability Rights) program.³ They defend the right of the psychotic to refuse treatment over the objections of families and doctors.
- Reign in or eliminate the Civil Rights of Institutionalized Persons Act (CRIPA) division of DOJ which is bringing ADA/Olmstead suits to force psychiatric hospitals to discharge patients.⁴ (Note Trump help)
- Reform SAMHSA by encouraging and supporting Asst. Sec. Dr. McCance-Katz in her efforts to focus on SMI and reducing criminalization, ex, by insisting mental health block grants be used for that
- Use legislative or regulatory process to free families of seriously mentally ill from HIPAA Handcuffs and provisions in FERPA which prevent them from helping mentally ill loved ones.
- Restore proposals NRA claimed to support that would restrict either number of guns or capacity of guns in hands of seriously mentally ill, including those with representative payees.

¹ “The Outdated Institution for Mental Diseases Exclusion” May 1997, <http://mentalillnesspolicy.org/imd/imd-legal-analysis.pdf>

² Pub. L. 89-97, 79 Stat. 286.

³ *Protection and Advocacy for Individuals with Mental Illness Act*, as amended (42 U.S.C. §§ 10801-10807, 10821-10827)

⁴ *Civil Rights of Institutionalized Persons Act*, Pub. L. 96-247, U.S. Statutes at Large, Vol. 94 (May 23, 1980) 349 – 354