

The Future is Now to Decriminalize Mental Illness
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The Conference of Chief Justices and Conference of State Court Administrators has unanimously approved the use of the Sequential Intercept Model to engage persons with mental illness before contact with the criminal justice system and to divert those who come into contact with law enforcement and the criminal justice system from prosecution and incarceration and into treatment and recovery.

The COVID-19 pandemic has accelerated the need to implement these strategies. Law enforcement around the country is finding it necessary to avoid arresting those suffering from mental illness and instead divert them to crisis centers. Jails are not a safe place and hospitals are overburdened with persons infected with the COVID-19 virus. For example, the Ottawa County Jail in Michigan now has only 160 inmates in its 462 bed facility.

At the same time, the need for social distancing is requiring the expanded use of telemedicine and virtual meetings. A major counseling agency in Detroit, Michigan, is now seeing its clients virtually. Typically, a counselor will schedule 4-6 sessions per day, but not everyone shows up. Now the counselor can call on the client and if there is no answer, go to the next person. The result is seeing more people, being more productive, and making better use of a scarce resource. For the client, there is increased privacy. No need to sit in a waiting room with other people; no need to pay for public transportation; and no need to leave home.

For persons with mental illness, assisted outpatient treatment is a safer alternative than hospitalization. Michigan has led the way in making assisted outpatient treatment (AOT) more readily available. The presence of the COVID-19 virus makes this a much safer alternative. In Michigan, the court may order AOT if an individual has a mental illness and that mental illness causes the person to refuse treatment due to a lack of understanding of the need for treatment that may result in a substantial risk of harm. No clinical certificates are required prior to the hearing, and the individual need not be hospitalized prior to the hearing. In one county in Michigan, the psychiatrist for the community mental health agency signs a petition and files it with the probate court. An attorney is appointed and the case is set for hearing. The individual decides whether to attend. At the hearing testimony is given. If the proofs are clear and convincing, the judge enters an order

for AOT. The order goes to the psychiatrist who will supervise treatment, finalizes the terms of the treatment plan and files it with the court. If the person is noncompliant the court can order hospitalization for up to 10 days. The first 10 clients who were placed on AOT had nearly 40 hospitalizations in the prior 5 years. Since being on the order, nine have had no hospitalizations while one client who had had over ten hospitalizations has had two. The agency is saving money by drastically reducing hospitalizations, which also serves to reduce the stress on the emergency room. In addition, compliance with treatment is better and contact with law enforcement is avoided.

The practices being employed to reduce the use of jails and hospitals for persons with mental illness are practices that represent improved outcomes for persons with mental illness. In particular, this means less risk to personal freedom and less trauma from incarceration and involuntary hospitalization. These are the practices we need to build on if we are to be successful in decriminalization of mental illness.