

State Strategies to Address the Crisis in the Competence to Stand Trial and Competence Restoration System

WEBINAR-SUPPORTING DOCUMENT

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A Formidable Crisis

Unbeknownst to the general public, thousands of individuals with a range of mental health issues are languishing in jails awaiting an assessment of their competence to stand trial (CST). This backlog is both a human and systems crisis. Many of these individuals have not been criminally charged or sentenced. They remain in some form of detention, often in legal or clinical limbo. Beyond the significant impacts on the individual, this causes stress on local jails that must detain people and on state mental health systems that must eventually provide evaluation, treatment, and restoration services to this burgeoning population. The result is a series of wait-lists: waiting in jail for a competence assessment, waiting in jail for a hospital bed for restoration to competence, waiting in a state hospital to be returned to jail following restoration, and then waiting again for their criminal case to recommence. Wait-lists have become the foundation for numerous federal class-action cases brought by disability rights attorneys. These cases have determined that it is unconstitutional for the state to hold pretrial individuals in jail for prolonged periods of time while they wait for a hospital bed. Though often facing minimal criminal liability, these people wait in jail longer than their potential criminal sentence if convicted.

Faced with this multi-systems crisis, state policymakers and local and state behavioral health and criminal justice professionals agree that reform is needed. The National Association of State Mental Health Program Directors reports¹ that nearly all states indicate that their current system lacks the resources to adequately handle the influx of individuals into their CST processes. Local forensic treatment systems, state hospitals, jails, and the criminal justice system are at crisis capacity.

To address this crisis, the Substance Abuse and Mental Health Services Administration (SAMHSA) tasked SAMHSA's GAINS Center—operated by Policy Research Associates, Inc. (PRA)—to work with selected states to resolve CST and competence restoration (CR) issues. This document will describe promising state strategies and accomplishments to date since 2019.

The National Scan of Competence to Stand Trial and Competence Restoration

In 2018, PRA began this task by conducting a national scan of CST and CR research, policy, practices, and law. This comprehensive review highlighted several key findings and recommendations:

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- There is a lack of empirical research and data on CST/CR; states cannot improve their competence systems without systematic data collected across the criminal justice system.
 - Cross-system collaboration from the legal and behavioral health fields is required for improving the competence system.
 - States need to work to limit CR to individuals facing the most serious charges.
 - States need to prioritize providing competence services in the least restrictive environment and build out community-based services to meet the demand.
 - Guidance on the appropriate use of the competence system needs to be developed and widely shared.
 - The competence system should be limited to individuals who are both legally and clinically appropriate.

The State Learning Collaborative on Competence to Stand Trial and Competence Restoration

Over a 4-year period, SAMHSA's GAINS Center convened a Learning Collaborative focused on improving CST and CR policies and practices within a group of states selected through a national competitive application process. The foundation for the Learning Collaborative was built on the themes identified in the national scan and the issues presented by the participating states. The Learning Collaborative required the involvement of multi-disciplinary state teams, including judges, district attorneys, defense attorneys, sheriffs/jail administrators, state forensic mental health directors, and local mental health treatment providers.

States were motivated to join the Learning Collaborative for a range of reasons. However, a singular shared goal was to improve services for people with mental health issues involved in the criminal justice system. While each state has its own specific challenges, common areas of concern included the following:

- increased demand for competence evaluations,
- the lack of evidence-based screening and assessment measures,
- the long wait-lists for CR services,
- the need to identify best practices for CR programs,
- the gaps in systematic data collection and analysis in siloed mental health and criminal justice systems, and
- the need to build collaborations between state and local agencies.

The Learning Collaborative approach was selected by the GAINS Center as it facilitates both individual state learning and peer-to-peer state sharing and learning and has been acknowledged as an effective strategy to promote system change. States gained knowledge and information from national experts in the field as well as from their interactions and discussions with peer states. While participants benefited from the information that was provided to all the states, each state also received intensive technical assistance and on-site consultation customized to their specific needs. Each state team was required to include individuals from different disciplines and sectors. This promoted the essential cross-system discussions that were previously difficult for the states to achieve in the absence expert coordination and facilitation.

The Learning Collaborative connected with participants using a variety of mechanisms: webinars, workshops for peer-to-peer engagement, state-specific virtual and in-person technical assistance, and all-state virtual convenings and forums. Webinars focused on the competence process and included topics such as risk assessment, cultural humility, mental illness, and violence. Workshop series focused on community-based competence services, jail-based restoration programs, engagement with local justice leaders, diversion options for people whose CST is raised as a concern, and clinical issues for this population. Workshops were led by national experts and included opportunities for peer-to-peer engagement and sharing.

Another key component of the Learning Collaborative was the one-on-one technical assistance provided by national experts who were matched to the technical assistance requests of the states. This allowed state teams to focus on specific goals and identify barriers to and opportunities for systems change. Many state teams also engaged in strategic planning facilitated by the GAINS Center staff and consultants. Examples of intensive technical assistance included a Sequential Intercept Mapping² workshop focusing on the competence process; consultation with national judicial leaders on how to engage local judges in system reform; and statistical consultation on outpatient restoration programs.

Over the duration of the Learning Collaborative, the sharing of information, support, and materials across the states and among team members progressively increased. Twenty-five subject-matter experts participated in the Learning Collaborative, and some worked directly with individual state teams. Each year, the Learning Collaborative opened with an all-state virtual meeting in which states presented their goals and plans for the year and that culminated in a closing virtual forum for states to discuss their goals, accomplishments, and next steps.

The following were the Learning Collaborative's key objectives.

1. Enhance collective knowledge of key issues and familiarity with CST and CR
2. Understand promising, best, and evidence-based practices in CST and CR
3. Develop strategic plans that focus on resolving state CST and CR issues
4. Increase knowledge through peer-to-peer sharing about CST and CR challenges and lessons learned in implementing strategies

Thirteen states participated in the Learning Collaborative. Among them, 5 states elected to participate for only 1 year; 8 states participated for multiple years. Each state was assigned a facilitator from the GAINS Center who worked with the state team during the Learning Collaborative. These trained facilitators also had expertise at the intersection of mental health and criminal justice issues. The facilitators triaged states' specific technical assistance needs, matched them with subject-matter experts to address the most pressing concerns, and assisted states in making progress toward their respective goals. The Learning Collaborative demonstrated that meaningful reforms require input from multiple state and local stakeholders and that most reforms take considerable time, commitment, and momentum.

Table 1. States and Districts in the CST/CR Learning Collaborative

States/Districts	2019	2020	2021	2022
Alabama	NA	NA	X	NA
California	X	X	NA	NA
District of Columbia	X	X	X	X
Florida	X	X	X	NA
Georgia	X	NA	NA	NA
Illinois	X	NA	NA	NA
Nebraska	X	X	X	X
New Hampshire	NA	X	X	X
New York	X	NA	NA	NA
North Carolina	NA	X	X	X
Oregon	NA	X	X	X
Texas	X	X	X	X
Utah	NA	X	NA	NA

Initially, the Learning Collaborative was designed to host in-person convenings and technical assistance. However, due to the COVID-19 pandemic, the GAINS Center transitioned to more virtual convenings. This virtual approach did not seem to impair the Learning Collaborative. Webinars and workshops included a wider audience, and more members of each state team were able to participate in a virtual environment. While some of the advantages of working as a team in a facilitated retreat-like environment away from usual business and office interruptions were missed, there were cost savings, reduced travel stress and planning, and more state participants for each team.

State Strategies to Improve the Competence System

The participating states entered the Learning Collaborative with a range of issues and challenges. The specific objectives of each state varied considerably. This variation is reflected in the different approaches the states undertook to improve their CST and CR systems and in their respective accomplishments. The following discussion highlights selected states’ key approaches and notable accomplishments over the course of the Learning Collaborative.

Alabama: Training in Sequential Intercept Mapping to Identify Resources and Gaps in Their Competence System

The Alabama Department of Mental Health joined the Learning Collaborative for 2020 and requested a virtual Sequential Intercept Mapping (SIM) workshop to focus on Intercepts 2 and 3.³ (See Figure 1 in the endnotes for an illustration of how CST and CR fall across the intercepts.) This full-day technical assistance event was provided by the GAINS Center. After mapping their resources and gaps, their cross-systems SIM team identified four priorities for change.

1. Develop strategies to reduce use of inpatient competence evaluation orders and increase use of outpatient competence evaluations; discharge individuals from inpatient settings who are found to be “unrestorable” (e.g., they have a severe and irreversible cognitive disorder, such as dementia)

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2. Enhance communication, training, and distribution of information about available resources
 3. Develop a universal order for competence evaluation and review best practices regarding collecting information needed to inform competence evaluation
 4. Increase uniformity in CST/CR processes throughout the state, beginning with an inventory of resources/gaps by region/locality

California: Address an Extensive Competence to Stand Trial Wait-List Through Diversion Programs

California continues to have an extensive wait-list for inpatient forensic beds, despite providing inpatient CR only to individuals charged with felonies. During 2019, the California team developed a forensic mental health felony diversion program to help reduce this wait-list and to provide support to enable these individuals to remain in the community. All programs were brought together for an in-person, 2-day technical assistance event led by GAINS Center subject-matter experts. In 2020, California built and implemented the diversion program in 24 counties. A GAINS Center subject-matter expert held three virtual case conferences for all felony diversion program staff across the state to provide information and support to stakeholders responsible for diversion. These case conferences enabled the forensic teams to consider how to safely divert individuals into community-based programs for persons charged with felonies who are incompetent to stand trial.

District of Columbia: Comparing Outpatient vs. Inpatient Competence Restoration

The Outpatient Competency Restoration Program (OCRP) in Washington, DC, was the focus of the district's participation in the Learning Collaborative. DC statutes allow use of the outpatient program for individuals found incompetent to stand trial and likely to attain competence. In-house data provides observable benchmarks. Based on an ongoing evaluation of the OCRP that identified areas for improvement, the Department of Behavioral Health revised the program by increasing education and training materials and focusing on alternative learning modalities; improving partnerships with law enforcement; and increasing referrals for detained individuals. The DC team worked with a GAINS Center statistical expert to compare two periods of program data and found improvements on target goals. The study found that outpatient restoration was efficient for up to 105 days and was less costly when compared with inpatient restoration. The evaluation findings were published in a peer-reviewed journal and will position the department for a policy change.

Florida: Improving the Quality of Forensic Evaluations Statewide

The Florida team identified multiple goals during their 3 years in the Learning Collaborative, and each accomplishment generated new issues to address. The top priority for Florida's team was to improve the quality of forensic evaluations statewide. They conducted a review of competence evaluations, which enabled them to improve the quality of evaluations and promote recommendations for community restoration in lieu of commitment to state mental health treatment facilities. To reduce inpatient commitments, they established regional procedures for flagging people facing non-violent felony charges and developing a diversion plan. Additionally, to further reduce inpatient commitments, they

redefined the state’s definition of “mental illness” to exclude traumatic brain injury and dementia from the definition for CST determinations. The second priority was to enhance mental health screening at jail bookings. Florida conducted a statewide jail screening survey. This was linked to an early diversion pilot project which identified individuals suitable for diversion at the jail and linked them with forensic peer support specialists. A statewide forensic peer specialist workgroup emerged from this project. The third priority was to increase community capacity for providing restoration services; this was accomplished by increasing jail-based CR services and utilizing the Florida Network of Care website as a resource hub for community-based forensic services.

Nebraska: Reduce Referrals for Competence Evaluations and Wait-Times for Competence Restoration Through Legislative and Multi-stakeholder Groups

The Nebraska team’s priority was very clear—to reduce the number of persons referred for competence evaluations and the wait times for restoration. They identified statutory change as one method for reaching their goals: for the 4 years prior to the Learning Collaborative, legislation had been proposed to modify state law, which permitted only inpatient restoration, to now allow for restoration in less restrictive settings. By bringing together a multi-disciplinary stakeholder team, they crafted successful legislation that permitted alternative treatment settings for restoration. The law was passed in 2019 and went into effect in July 2021. During 2020, the team focused on developing an outpatient CR program and the identification of target populations for diversion. As the program was implemented, the lack of service components in some rural parts of the state became apparent, resulting in three approaches to restoration:

- a community provider delivers all program components;
- a community provider delivers some treatment components, and the state provides other components; and
- a community provider delivers all components for a single case in communities with very few cases.

After observing an initial 30 percent decrease in wait-times, these improvements were unfortunately diminished during the COVID-19 pandemic.

New Hampshire: Build Statewide Support for Establishing Competence Restoration Services

New Hampshire has no formal restoration services in the state, a gap identified by the multi-disciplinary team. The team has engaged in discussions with stakeholder groups to establish a vision for their forensic services across the state, including the need for legislation to establish competence evaluation and restoration services. The team received technical assistance from a GAINS Center subject-matter expert with significant state and national leadership on behavioral health to focus the goals and pathways forward and to develop a strategy for reaching the team’s goals. Among the barriers to introducing and implementing statutory change was resistance from the legal community. GAINS Center legal experts provided technical assistance to address the gaps in understanding the competence process among some legal professionals and to work to improve their knowledge. A major accomplishment was that the state

approved funds for a forensic hospital, and they were successful in ensuring that the facility would include services for the competence population.

North Carolina: Implementation of Community-Based and Jail-Based Competence Restoration Programs

The strategic goal identified by the North Carolina team was to address the expanding needs of individuals identified as incompetent to stand trial, including the implementation of community-based and jail-based CR programs. At the time they joined the Learning Collaborative, North Carolina allowed for community-based competence evaluations, but all restoration programs were in the state psychiatric hospitals. The North Carolina team created cross-system workgroups and found that, in general, competence evaluations done by the staff at the state psychiatric hospitals were rated as higher quality compared to the those done by local evaluators. They sought to improve the efficiency and effectiveness of the current system and made recommendations including statutory changes to centralize evaluations by establishing three regional outpatient centers for all competence evaluations. The team's goals for changing and improving the competence system in North Carolina included a plan for 6 pilot programs lasting 2 years with comprehensive data collection through the newly created forensic data portal. These pilots included three community-based restoration programs and three detention center-based restoration programs, focusing on counties that provide the most admissions to state hospitals for competence services. The identified potential benefits of these pilot programs include decreased burden on law enforcement for transportation, reduced repetitive evaluations, expedited court-ordered evaluations, a sustainable Medicaid model for reimbursement, cost savings, expedited entry into treatment, and high-quality services provided by specialized professional staff.

Oregon: Comprehensive Statewide Improvement of the Competence System through a Statewide Summit

The Oregon team's approach to improving their competence system is comprehensive. Their multi-disciplinary team first mapped their current competence processes, services, and funding, and identified gaps. They identified regional behavioral health centers as a way to provide quality forensic services across the state, not just in metropolitan areas, and reviewed other states' models to provide the Oregon legislature with information to support the expansion of behavioral health resources. Their considerable efforts revealed that across the state, other groups were indirectly or directly examining issues related to competence services. They formed a statewide leadership committee to coordinate efforts among all related committees, councils, and workgroups. Together, the coalition initiated plans for a statewide Behavioral Health Summit with a goal to develop a model for integrating the behavioral health and justice systems, including services for competence evaluation and restoration. At the heart of the Summit is a focus on meeting the needs of individuals with mental and substance use disorders who are at risk of entering the justice system, who are in the justice system, or who are transitioning out of the justice system—this captures the variation in status of the CST population. An additional effort related to integrating forensic services is the Behavioral Health Emergency Coordination Network, which provides a culturally responsive “front door” into community-based crisis services in one county. The Oregon team's vision is that any system that an individual encounters—legal or behavioral health—should be integrated across all systems to meet the needs of the individual.

Texas: Development of a Statewide Initiative to Reduce Wait-Times for Competence Services and to Identify and Develop Diversion Options

Texas identified three challenges that they would address in the Learning Collaborative:

1. people with mental illness are arrested when diversion is both possible and appropriate;
2. CR is equated with comprehensive treatment, when in practice it is often just stabilization and memorization of legal procedures; and
3. inefficiencies and delays exist in the evaluation and restoration of individuals, leading to wait-lists for services.

The proposed solutions include the development of a statewide initiative to identify key steps to eliminate the wait for inpatient CR services; the development of tailored resources and provision of targeted technical assistance to communities across the state; and the enhancement of accountability and creation of standard processes across the continuum of stakeholders.

A multipronged statewide effort at reducing their wait-list for competence services was launched, supported by a toolkit titled *Eliminate the Wait: The Texas Toolkit for Rightsizing Competency Restoration Services*. The toolkit includes checklists for sheriffs and jail administrators, judges and court staff, and treatment providers. Each checklist requires the professional to examine the issue of CR from their perspective and to suggest ways to improve services to reduce wait times. In addition, the team was successful in having legislation enacted to address specific legal inefficiencies and barriers in the timely resolution of cases involving questions of CST. Another component of this statewide approach was to engage communities in conversations, based on their own data, to examine how the local systems can contribute to the improvement of competence processes. The state will provide technical assistance to communities and support their strategic planning through SIM mapping. By connecting communities across Texas with *Eliminate the Wait*, the team seeks to build peer learning and the state's own community of practice.

Summary

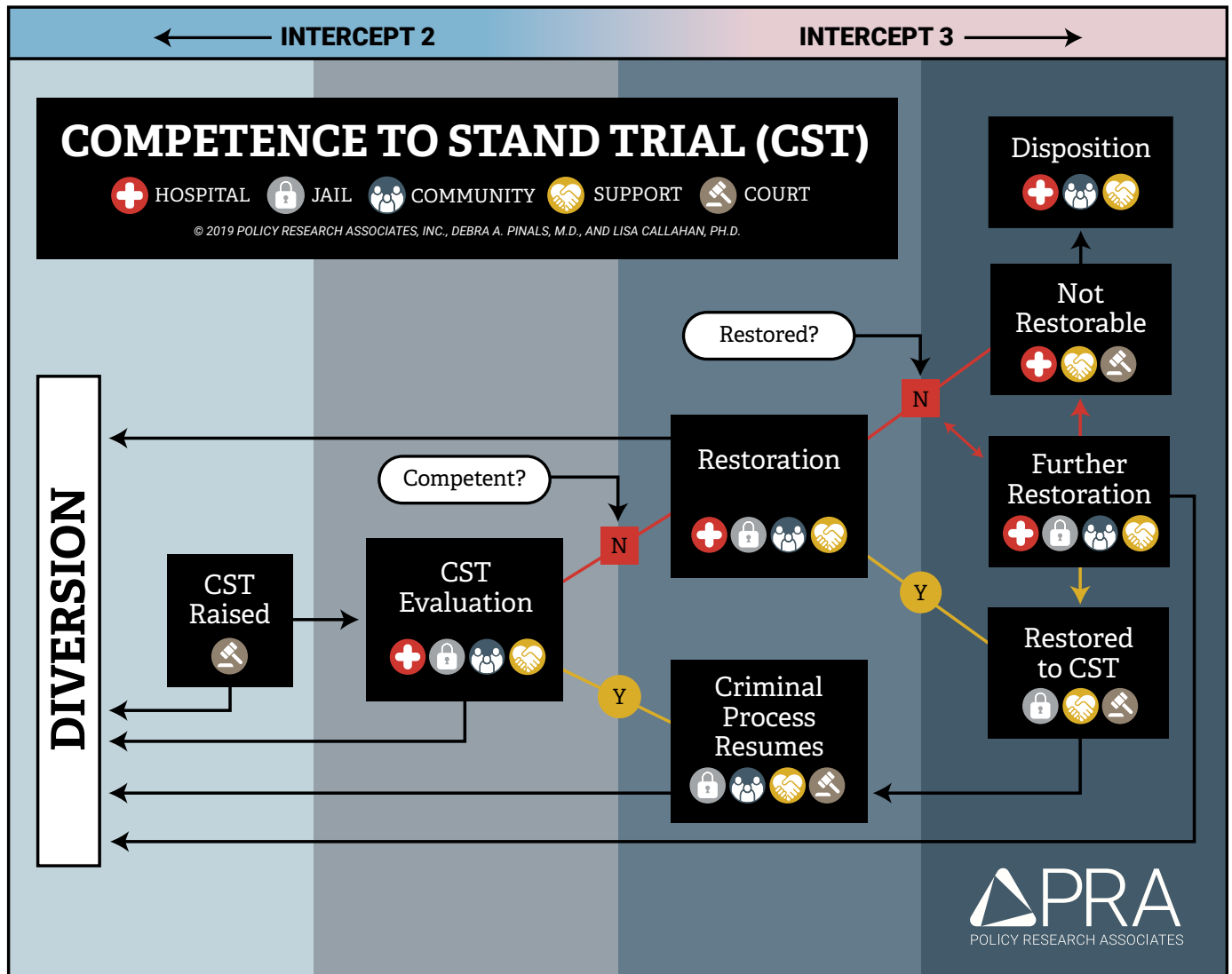
The Learning Collaborative served as an effective vehicle to enable states to tackle growing and seemingly intractable problems in the CST/CR system. With committed cross-sector, multi-disciplinary teams given access to experienced facilitators and a broad range of subject-matter experts and opportunities for peer-sharing and problem-solving, the participating states made important gains in their common goal of reducing barriers to timely resolution of CST cases. While the proposed solutions vary across the states, much can be learned from their work. In closing, a brief summary of lessons learned from the Learning Collaborative is provided below.

- **Composing teams of individuals from across different disciplines and sectors was essential** to facilitating effective conversations, identifying gaps and overlaps in efforts, and establishing the consensus necessary to build and maintain momentum.

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- As the multi-disciplinary teams of state and local stakeholders continued the in-depth focus on their competence practices and policies, they often **broadened their objectives to create system-wide changes**, recognizing that focusing on one small part of the process would not likely yield significant results.
 - In three states, **legislation was enacted to improve the competence system**. The scopes of the legislation, however, reflect each state's unique launching place for change, including providing for community-based restoration, restricting diagnoses allowable in competence cases, identifying and eliminating legal barriers to timely resolution of cases, and examining statewide responses to persons with mental and substance use disorders in the justice system.
 - One jurisdiction learned that meaningful change would come only after **all legal partners understood the challenges and supported the team's goals; in other words, reforms will only happen when all partners are at the table**.
 - State teams began their participation in the Learning Collaborative recognizing the **importance of data collection, analysis, and reporting and sought to improve data sharing across the intercepts**. One team compared their outpatient CR program performance before and after program revisions and published the findings in a peer-reviewed journal, and another state completed a study of competence evaluations to identify areas for improving statewide practices.
 - **Resource sharing across the teams grew over time, resulting in teams frequently communicating about their work and their outcomes**. Participation in the subject-matter experts' workshops and other technical assistance was extensive among the team members, further underscoring how critical it is for states to have access to leaders in the field to plan, promote, and implement significant changes in the complex CST system.

Endnotes

- 1 Amanda Wik, Vera Hollen, and William H. Fisher, "Forensic Patients in State Psychiatric Hospitals: 1999–2016," *CNS Spectrums* 25, no. 2 (April 2020): 196–206, <https://doi.org/10.1017/S1092852919001044>.
- 2 Substance Abuse and Mental Health Services Administration, "The Sequential Intercept Model (SIM)," Criminal and Juvenile Justice, last modified June 24, 2021, <https://www.samhsa.gov/criminal-juvenile-justice/sim-overview>.
- 3 Figure 1, "Competence to Stand Trial (CST)":



About

SAMHSA’s GAINS Center for Behavioral Health and Justice Transformation focuses on expanding access to services for people with mental and/or substance use disorders who come into contact with the justice system.

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