

# **A SYSTEM IN CRISIS...MENTAL ILLNESS<sup>1</sup> AND THE JUSTICE SYSTEM**



**Milton L. Mack, Jr.  
State Court Administrator, Michigan**

**National Association of Women Judges  
40<sup>th</sup> Annual Conference  
San Antonio, Texas  
October 5, 2018**

# NAWJ LEADER FROM MICHIGAN

## **Judge Michelle Rick:**

- 29th Circuit Court, Clinton & Gratiot Counties
- NAWJ District 7 Director for MI, OH, WV
- Spearheaded several regional NAWJ MentorJet “speed mentoring” sessions between judges/attorneys and law students



# INTRODUCTION

- Jails and prisons have become the primary institutions for persons with mental illness
- A mental health system lacking the capacity to prevent incarceration



# INTRODUCTION (CONT.)

The problems

How the problems developed

Strategies to address the problems

The role of the courts in addressing the problems

# SYSTEM LIMITATIONS

Inadequate to  
prevent  
homelessness,  
incarceration,  
impoverishment  
and other  
consequences



The system  
does not  
intervene  
until a  
person is in  
crisis.

# CRISIS INTERVENTION

- Most states and the federal government have convened commissions to study the issue.
- Michigan's report is a good summary and is available at:  
[https://www.michigan.gov/documents/FINAL\\_MHC\\_REPORT\\_PART\\_1\\_107061\\_7.pdf](https://www.michigan.gov/documents/FINAL_MHC_REPORT_PART_1_107061_7.pdf)

## THE FACTS

- 2,000,000 persons with mental illness will spend time in our nation's jails and prisons this year.
- 383,000 persons with mental illness currently reside in our nation's jails and prisons.

## THE FACTS (CONT.)

- 1 in 10 police calls across the nation now involve mental health situations
- People with mental illness are 16 times more likely to be killed than any other civilians when approached or stopped by law enforcement.



# THE FACTS (CONT.)

- In 44 states, a jail or prison holds more prisoners than the largest State psychiatric hospital.
- 25-40% of persons with serious mental illness have spent time in jail or prison.



## THE FACTS (CONT.)

- **2/3 of all prisoners were off their medications at the time of their arrest.**



- **And the problem is growing.**

# THE CONSEQUENCES TO PERSONS WITH MENTAL ILLNESS

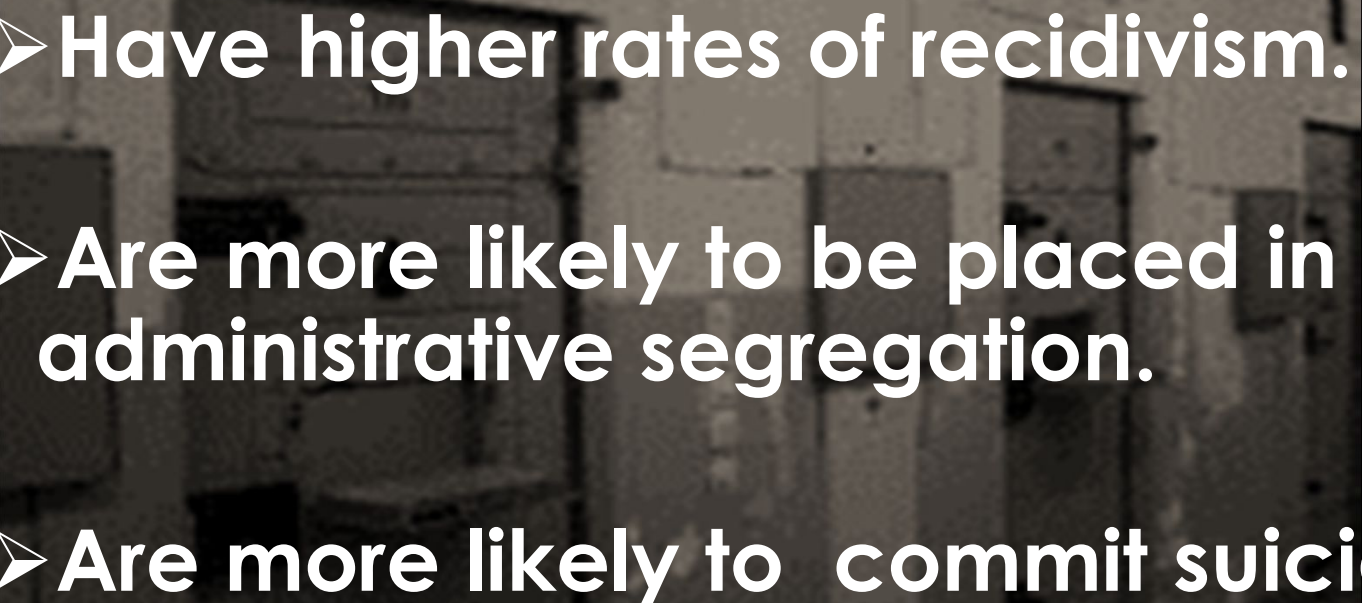
- Jails and prisons are not therapeutic environments. Prisoners with mental illness:
  - Experience increased symptoms and **diminished quality of life** following release.
  - Are more likely to experience **homelessness** after incarceration.

# THE CONSEQUENCES TO PERSONS WITH MENTAL ILLNESS (CONT.)

- Serve longer sentences.
- Have more parole and probation violations.



# THE CONSEQUENCES TO PERSONS WITH MENTAL ILLNESS (CONT.)

- 
- Have higher rates of recidivism.
  - Are more likely to be placed in administrative segregation.
  - Are more likely to commit suicide.



# THE CONSEQUENCES TO SOCIETY

- Treating a person with serious mental illness in prison is expensive; and,
- Results in an increased rate of recidivism.



# THE CONSEQUENCES TO SOCIETY (CONT.)

- The outcome:  
Societal fiscal and  
human  
expenditures that  
must be made  
over and over  
again with no  
measurable  
benefit.



# COLLATERAL DAMAGE: FAMILIES AND CHILDREN

- Mental illness increases the likelihood of **divorce**.
- Mental illness may damage opportunity for **custody**.
- Mental illness may cause **visitation** to be limited or denied.



## COLLATERAL DAMAGE: FAMILIES AND CHILDREN (CONT.)

- **Mental illness may result in the appointment of a guardian for a parent.**
- **Mental illness is often a factor in termination of parental rights.**



# COLLATERAL DAMAGE TO CHILDREN

- **Adverse Childhood Experiences (ACEs):**
  - Mental illness, along with divorce and incarceration, are 3 of the 8 leading ACE events currently measured.
  - ACE events have been linked to risky health behaviors, chronic health conditions, low life potential and early death.

# COLLATERAL DAMAGE TO CHILDREN (CONT.)

- Living with a family member with mental illness increases the likelihood of developing serious emotional disturbance and later a serious mental illness.

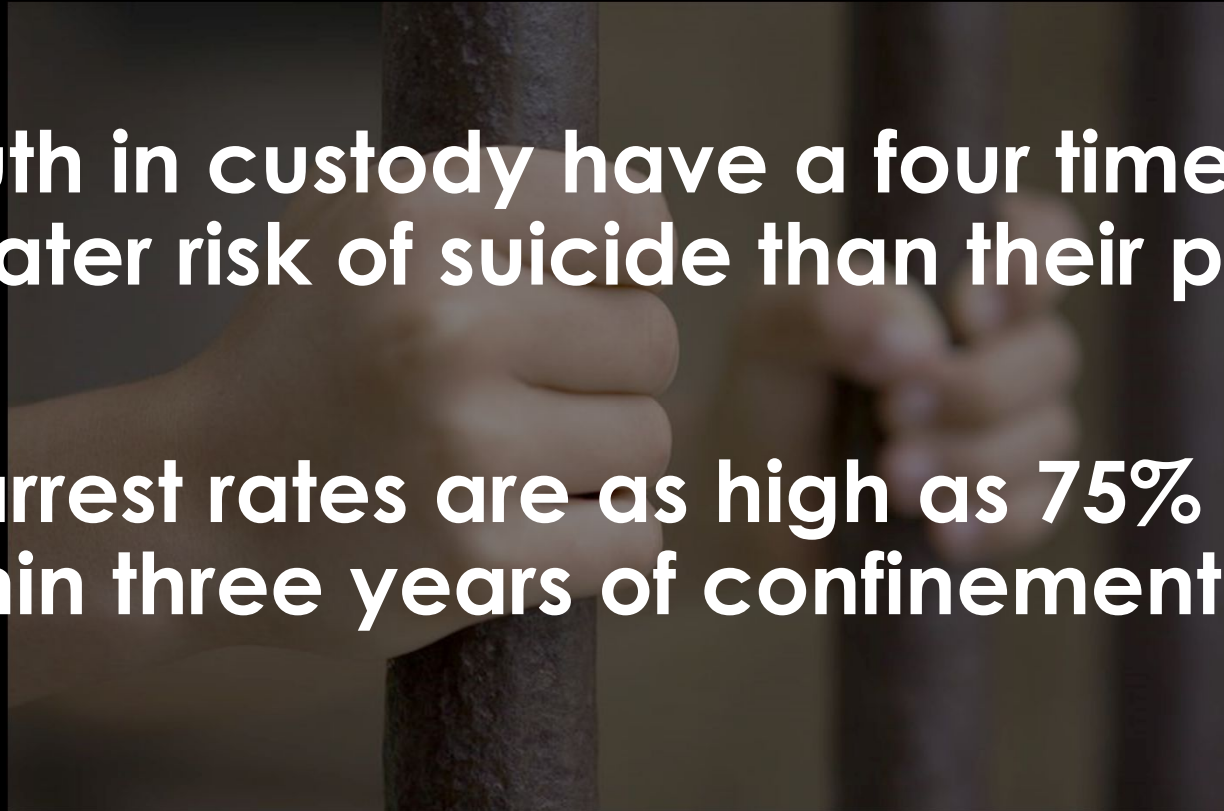


## COLLATERAL DAMAGE TO CHILDREN (CONT.)

- **Two million children** are arrested every year and 70% have a mental health condition.
- Many get worse in custody because **treatment is not available** due to the IMD exclusion (Institution for Mental Diseases).

# COLLATERAL DAMAGE TO CHILDREN (CONT.)

- Youth in custody have a four times greater risk of suicide than their peers.
- Rearrest rates are as high as 75% within three years of confinement.



# COLLATERAL DAMAGE TO CHILDREN (CONT.)

- **Untreated mental illness of a parent is a significant risk factor for children.**
- **The peak years for first episode of psychosis are 14-19.**



# COLLATERAL DAMAGE TO CHILDREN (CONT.)

- Timely treatment for adults and children is **not readily available**.
- All of this perpetuates an **endless cycle** of damage to families and children.



# THE TRIGGER

- **Community Mental Health Act of 1963, as amended in 1965:**

- **Incentivized closing psychiatric hospitals**
- **Shifted funding from states to federal government.**





## THE TRIGGER (CONT.)

- Supreme Court decision in *O'Connor v Donaldson*:
  - Interpreted to require dangerousness as requirement to order involuntary treatment
  - Helped trigger rewrite of mental health codes to severely limit authority to order mental health treatment

# THE TRIGGER (CONT.)

Post O'Connor standards for ordering treatment in all States.

1. Dangerousness

2. Gravely disabled

3. Need for treatment

# RESULT OF NEW MENTAL HEALTH CODES

- Before adoption of new mental health codes **559,000 people** were in state psychiatric hospitals.
- Today, fewer than **38,000 persons** are in those hospitals driven primarily by the IMD exclusion.

## RESULT OF NEW MENTAL HEALTH CODES (CONT.)

- The **community treatment system** never materialized.
- The **de-institutionalization strategy** did not work as planned. Instead, we have trans-institutionalization.

# ADDITIONAL ISSUES

- Funding decisions.
- States using general fund dollars to match Medicaid dollars.
- 2007-09 recession resulted in states cutting funding for mental health by \$4.35 billion.





## ADDITIONAL ISSUES (CONT.)

- Critical shortages of bed space and professional help, particularly for children.
- Delays in processing persons believed to be mentally ill through the criminal justice system.
- Law enforcement chooses jail as the most likely option for access

# AN OUTPATIENT MODEL

- The 1990s saw the emergence of the “Recovery Model,” in which mental illness is seen as:
  - Treatable; and,
  - Recovery is possible.



## AN OUTPATIENT MODEL (CONT.)

- Persons with severe mental illness can:
  - **Regain control** of their life.
  - See their capacity to exercise **self-determination** restored.

Early intervention is preferred to secure the likelihood of a successful recovery, for adults and children.



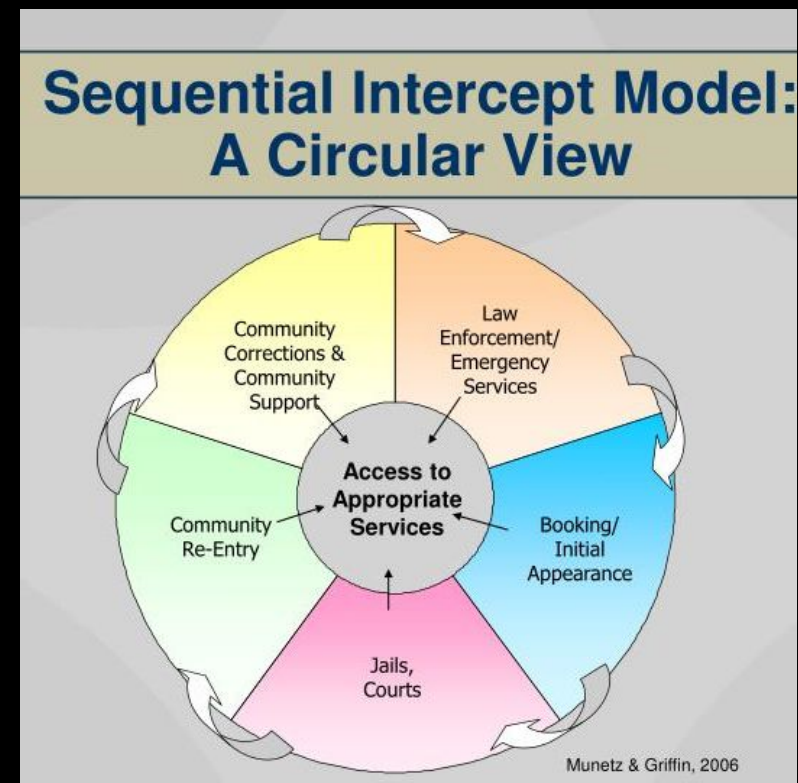
# CURRENT MENTAL HEALTH CODES



- Do not support the recovery model.
- Are focused on preventing hospitalization and wait for a crisis.
- Delay treating mental illness which is harmful.
- Risks permanent incapacity.

# A BETTER APPROACH

- The Sequential Intercept Model
- A comprehensive approach to handling persons with mental illness in the criminal justice system.



# A BETTER APPROACH (CONT.)

The current model identifies 5 Intercept points:

## Intercept 1 – Contact with Law Enforcement

- Crisis Intervention Training

## Intercept 2 – Initial Detention & Court Hearing

- Screening, Assessment, Pretrial Diversion, Service Linkage

## Intercept 3 – After Incarceration, Including MH Court and Other Services

- Mental Health Courts

# A BETTER APPROACH (CONT.)

## Intercept 4 – Reentry

- Plan for Services & Coordination of Care

## Intercept 5 – Parole or Probation

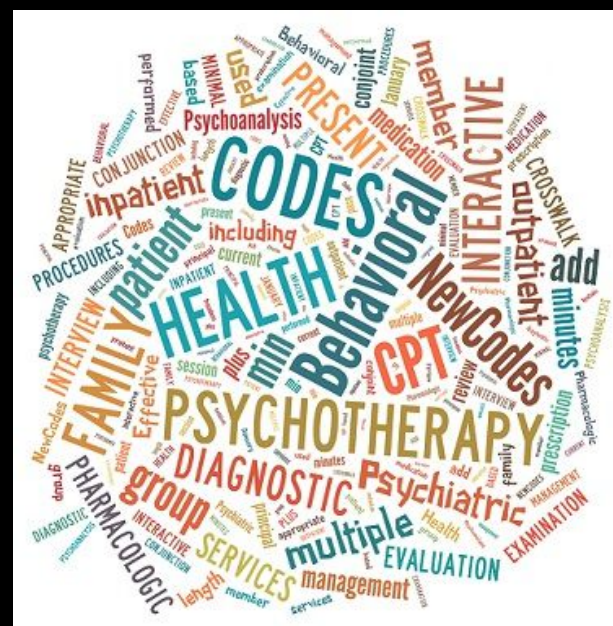
- Screening, Plan for Services & Coordination of Care

# INTERCEPT 0

- Intercept 0 has recently been added and includes strengthening crisis response models and proactive police strategies.
- A better Intercept 0 would be designed to be used *BEFORE* contact with the criminal justice system, *BEFORE* the damage has been done.
- A better Intercept 0 would address the front end of the mental health system, not just the back end.

# A BETTER INTERCEPT 0

- Mental health codes must be converted from **inpatient** models to **outpatient** models to reflect modern mental health treatment practices.

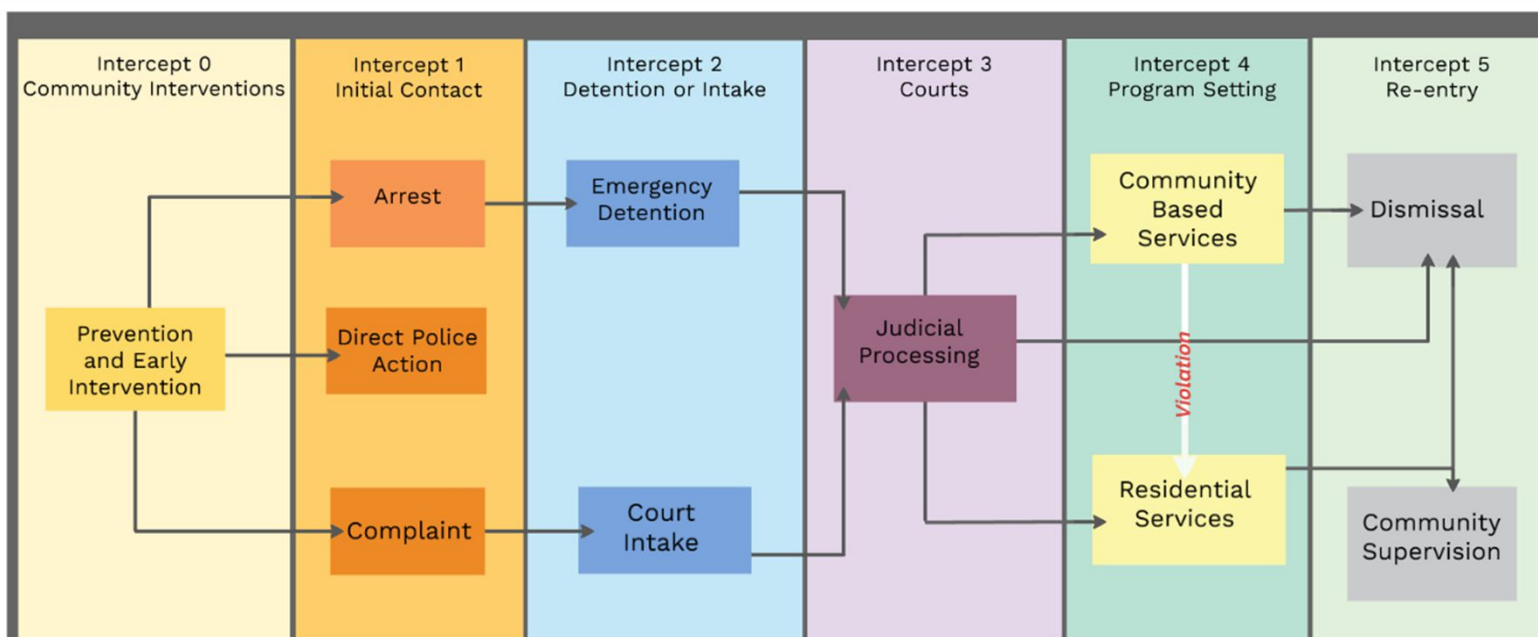


# A BETTER INTERCEPT 0 (CONT.)

- Two key strategies to improve Intercept 0:
  - Modify mental health codes to permit **earlier intervention** in the course of someone's mental illness
  - Modify mental health codes to permit courts to order **assisted outpatient treatment** when appropriate



# A BETTER INTERCEPT MODEL FOR CHILDREN



Oakland Community  
Health Network

Developmental Disabilities • Mental Health • Substance Recovery

## The Juvenile Sequential Intercept Model



# A BETTER STANDARD FOR COURT ORDERED TREATMENT

- Compared to guardianship:
  - Focus is on capacity, not behavior.
  - No need for danger.



# A BETTER STANDARD FOR COURT ORDERED TREATMENT (CONT.)

- **Plenty of warning** when a person with serious mental illness is beginning to decompensate.
- **Family Pressure:** Imminent serious physical injury/physical harm or police contact.
- Mental illness should be treated like **any other illness**.

# THE BETTER STANDARD

A court should be able to order treatment:

- “When a person’s judgment is so impaired by mental illness that he/she is unable to make informed decisions about that mental illness.”

## THE BETTER STANDARD (CONT.)

- It is the same standard used to **appoint guardians**.
- It permits **earlier treatment** and recovery while avoiding the risk of permanent damage to resiliency and the risk of harmful behavior.
- It creates a better opportunity to **restore a person's capacity** and liberty to make his or her own choices.

# ASSISTED OUTPATIENT TREATMENT

- Assisted outpatient treatment is not confinement and is useful in preventing:
  - Hospitalization
  - Arrests and Incarceration
  - Poverty
  - Homelessness



# THE BETTER APPLICATION OF THE BETTER STANDARD

**New York State, a  
leader:**

- **AOT increases  
medication adherence**
- **Reduces hospital  
readmission**
- **Promotes recovery**





# THE BETTER APPLICATION OF THE BETTER STANDARD (CONT.)



- Results in substantially higher levels of personal engagement in treatment.
- Best predictor of perceived coercion or stigma was patient's perception of being treated with dignity and respect by mental health professionals, not whether treatment was voluntary or ordered.

## BARRIERS TO EFFECTIVE USE OF AOT

- **Current mental health codes** make it more difficult to secure court-ordered AOT than hospitalization.
- States usually require a **history of failure**, including prior involuntary hospitalization, incarceration or serious violent behavior before AOT can be ordered.

# IMPLEMENTING EFFECTIVE USE OF AOT

- Mental health codes need to be modified to permit court-ordered AOT whenever appropriate.
- Michigan has done this with amendments to Kevin's Law in 2016.



# DELIVERING ON THE PROMISE OF THE COMMUNITY MENTAL HEALTH ACT

- AOT should be the cornerstone of community treatment program promised by the Community Mental Health Act.



# DELIVERING ON THE PROMISE OF THE COMMUNITY MENTAL HEALTH ACT (CONT.)

- **Timely treatment** for parents with mental illness reduces the risk of ACE events for children.
- The **IMD exclusion** prevents the use of federal funds for children in custodial environments and needs to be eliminated.
- **Separate sequential intercept models** must be developed for adults and children.

# THE COURTS AS CONVENORS

- The courts, at the front and back doors of the civil commitment and criminal justice systems, are in the best position to convene all the interested parties to develop sequential intercept plans particularly because **they are at every stage of the continuum.**
- The consequences of untreated mental illness are felt throughout the justice system and the **courts can help forge a path** towards policies and practices that can treat those with mental illness more effectively and justly.





# CONTACT INFORMATION

**Milton L. Mack, Jr.**  
**State Court Administrator**  
**State of Michigan**  
**517-373-0128**  
**[mackm@courts.mi.gov](mailto:mackm@courts.mi.gov)**