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"Defunding" the Criminality of Mental Illness by Funding Specialized Police Training: How Additional Training and Resources for Dealing with Mental Health will be Beneficial for All Sides

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**“DEFUNDING” THE CRIMINALITY OF MENTAL ILLNESS BY
FUNDING SPECIALIZED POLICE TRAINING: HOW ADDITIONAL
TRAINING AND RESOURCES FOR DEALING WITH MENTAL
HEALTH WILL BE BENEFICIAL FOR ALL SIDES**

Margaret Ahern¹

Abstract

The momentous public outcry for police reform is the result of police encounters ending fatally, which is notably sixteen times more likely for individuals suffering from mental illness in the United States. These horrific incidents highlight the systemic failings of traditional police departments training and its failure to provide officers with the necessary skills to de-escalate crisis situations involving the vastly overrepresented mentally ill population involved in the United States justice system. This article demonstrates that effective police training involving crisis intervention and de-escalation techniques equip police officers with knowledge and skills that enable them to contrive more positive outcomes for all involved. With a particular focus on Ohio, this article highlights the significant discrepancy between ideal police training and current Ohio requirements, which glaringly fail to require continual police officer training. The article ultimately proposes that the Ohio legislature pass a bill that both requires police officers to complete increased training programs in de-escalation and crisis intervention while providing departments with the necessary funding to make implementation possible. By implementing the proffered recommendations, the State of Ohio has the opportunity to contrive more positive police encounters with mentally ill individuals and the wider community.

¹ J.D., May 2022, Cleveland-Marshall College of Law. I would like to thank my parents, Pat and Michele, and sisters, Annie and Katie, for their unwavering support and encouragement. I would also like to extend a special thank you to two of my incredible mentors Justice Michael P. Donnelly and Professor Robert J. Triozzi for their significant contributions to reform the criminal justice response to individuals with mental illness and providing me the opportunity to aid in your research. Their passion and dedication to this area is contagious and inspired the focus of my note.

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I. INTRODUCTION

Just imagine. A close member of your family, who suffers from mental illness, is going through a crisis. You try everything to calm them down, but nothing you try is seeming to help. You are worried about their safety, and as much as you hate to admit it, your own safety as well. Once you have expended all other options, you call the police for help, though you fear the outcome. Upon police arrival, you see the situation go from bad to worse. The officers are speaking to your loved one in an aggressive manner, escalating the mental crisis. You feel helpless as you see your loved one respond in an aggressive manner, simply as a result of their crisis. As you watch your loved one be handcuffed and driven away in a police car, you feel an immense amount of guilt for your decision to call the police for help.

Unfortunately for loving sister Rulennis Muñoz, the fictitious situation described above was her reality on September 13, 2020, but with a far more tragic outcome.¹ Her brother Ricardo was in the midst of a mental health “episode” in connection with his paranoid schizophrenia as a result of his refusal to take his medication.² Immensely concerned Rulennis was aware that her brother was in dire need of psychiatric attention, but knew from experience that emergency resources were limited without a judge deeming him a threat to himself or others.³ Fearing police involvement she called a county crisis intervention line hoping to have Ricardo committed to inpatient treatment, but was unfortunately directed to call police in order to obtain judicial petition to have him involuntarily committed.⁴ Ricardo Muñoz was dead within minutes of his sisters 911 call requesting aid in getting her mentally ill brother emergency hospital care.⁵ Upon police arrival, the paranoid victim armed with a knife warned officers to get back.⁶ Officers failure at any attempt of de-escalation lead to the victim making his last toward the officer who responded by firing several gun shots.⁷

The horrific tragedy experienced by the Muñoz family is unfortunately not an isolated incident, with strikingly similar facts to the more extensively

¹ Brett Sholtis, *During A Mental Health Crisis, A Family's Call To 911 Turns Tragic*, NAT'L PUB. RADIO (Oct. 20, 2020), <https://www.npr.org/sections/health-shots/2020/10/29/928239761/during-a-mental-health-crisis-a-familys-call-to-911-turns-tragic>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

publicized incident involving Walter Wallace.⁸ These incidents highlight the systemic failings of police departments training. The family of Walter Wallace notably declined to press charges against the officers that fatally shot their son 7 times, his mother reasoning that “they were improperly trained and did not have the proper equipment by which to effectuate their job.”⁹ Traditional police training fails to provide officers with the necessary skills to de-escalate crisis situations similar to what is described above.¹⁰ As a result, individuals with mental illness are vastly overrepresented in the United States justice system, and sixteen times more likely to be killed by police in the United States.¹¹ The cure for solving these issues is not mysterious. Effective police training involving crisis intervention and de-escalation techniques equip police officers with knowledge and skills that enable them to contrive a more positive outcome.¹² Implementation of such programming promotes both public and officer safety and build community trust in the criminal justice system.¹³

This paper will argue that it is to the benefit of all concerned that more police are trained and available to de-escalate mental health situations and

⁸ Grace Hauk, *Walter Wallace Had a Mental Illness, His Family Says. Why Did Police Respond?*, USA TODAY (Oct. 28, 2020), <https://www.usatoday.com/story/news/nation/2020/10/28/walter-wallace-philadelphia-shooting-mental-illness/6053831002/>. Walter Wallace was killed by Philadelphia police officers responding to his brothers call for help while he was experiencing a mental health episode. *Id.*

⁹ Vanessa Romo, *Walter Wallace Jr.’s Family Does Not Want Police Officers To Face Murder Charges*, NAT’L PUB. RADIO (Oct. 29, 2020), <https://www.npr.org/2020/10/29/929366690/walter-wallace-jr-s-family-does-not-want-police-officers-to-face-murder-charges>; see Edgar Sandoval, *Daniel Prude Was in ‘Mental Distress.’ Police Treated Him Like a Suspect.*, N.Y. TIMES (Oct. 9, 2020), <https://www.nytimes.com/2020/10/09/nyregion/daniel-prude-rochester-police-mental-health.html>. On March 3, 2020, a New York man, Daniel Prude, was killed by police that acknowledged he was acting “in a fashion consistent with an individual in some form of mental distress.” *Id.*

¹⁰ *He’s Not a Criminal, He’s in Crisis*, NAT’L ALL. ON MENTAL ILLNESS (July 31, 2020), <https://www.nami.org/Blogs/NAMI-Blog/July-2020/He-s-Not-a-Criminal-He-s-in-Crisis>.

¹¹ Jennifer L. Skeem, *Correctional Policy for Offenders with Mental Illness: Creating a New Paradigm for Recidivism Reduction*, 35 LAW HUM. BEHAV. 110, 110 (2011); *People with Untreated Mental Illness 16 Times More Likely to Be Killed by Law Enforcement*, TREATMENT ADVOCACY CTR., <https://www.treatmentadvocacycenter.org/key-issues/criminalization-of-mental-illness/2976-people-with-untreated-mental-illness-16-times-more-likely-to-be-killed-by-law-enforcement-> (last visited Dec. 7, 2021).

¹² NATIONAL ALLIANCE ON MENTAL ILLNESS, *supra* note 10.

¹³ See Michael S. Roger et al., *Effectiveness of Police Crisis Intervention Training Programs*, J. AM. ACAD. OF PSYCHIATRY AND L. ONLINE, Sept. 2019, available at <http://jaapl.org/content/jaapl/early/2019/09/24/JAAPL.003863-19.full.pdf>.

connect mentally ill individuals with proper resources as opposed to jail.¹⁴ In reaching this conclusion, Part I will discuss how mental health issues have steadily increased such that the criminal justice system has been overwhelmed by those issues, including policing criminal activity. Part I will include statistics related to the increase in mental illness in the United States giving a brief history of why mental illness has hit all-time highs in this country. Part II will demonstrate that criminal justice practices are duly incompatible with individuals suffering from severe mental illness, while Part III will analyze the promising practices focused on keeping mentally ill individuals out of the criminal justice system and directed to resources they need.

In Part III, this article will specifically focus on the use of Crisis Intervention teams, and state legislation requiring police de-escalation training and jail diversion resources to create better encounters with police and individuals in mental health crisis. Part IV will discuss Ohio's current response to mental health crisis in the criminal justice system, focusing on the incompatibility of current tactics with what is now the nation's mental health crisis. Finally, Part V will argue for the Ohio legislature to pass a bill requiring police officers to complete increased training programs in de-escalation and crisis intervention. Included will be a further outline of the positive impacts such training would have in decriminalizing mental illness, and on all police interactions.

II: HISTORY OF INSTITUTIONALIZATION OF MENTAL ILLNESS

Mental illness has always had a certain stigma attached to it. Historically, families were seldom to admit the existence of anything suggesting a "mental defect," and often hid mentally ill relatives.¹⁵ In the beginning of the 19th century, individuals with severe mental illness were often sent to live in shelters and hospitals due to alleged concern for public safety.¹⁶ These facilities, which were often a place to "house" mentally ill individuals rather than treat them, failed to provide adequate treatment for individuals with severe mental illness. As early as the 1840s, reports of abuse and neglect began to horrify many Americans.¹⁷

In the 1840's Dorothea Dix challenged the idea that mentally ill individuals could not be cured or helped.¹⁸ She successfully campaigned for the

¹⁴ *Crisis Intervention Team (CIT) Programs*, NAT'L ALL. ON MENTAL ILLNESS, [https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-\(CIT\)-Programs](https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs) (last visited Nov. 14, 2021).

¹⁵ Megan Testa, *Imprisonment of the Mentally Ill: A Call for Diversion to the Community Mental Health System*, 8 ALB. GOV'T L. REV. 405, 409 (2015).

¹⁶ *Id.*

¹⁷ "I Tell What I Have Seen"- *The Reports of Asylum Reformer Dorothea Dix*, 96 AM. J. OF PUB. HEALTH, 622, 624 (Apr. 2006). Dorothea Dix published reports outlining cruel practices in asylums, including "caging, incarceration without clothing, and painful physical restraint." *Id.*

¹⁸ *Id.*

severely mentally ill by lobbying state legislatures and the U.S. Congress, creating the first generation of American mental asylums.¹⁹ By the end of the 19th century mass numbers of mentally ill individuals were admitted to asylums.²⁰ As a result of the recognition that mental illness could be treatable came a side benefit: the percentage of correctional inmates with severe mental illness dropping to less than 1%.²¹

At the beginning of the 20th Century, institutionalization became the standard of care for individuals.²² Although these institutions were better than their counterparts of the Nineteenth Century, they were also not ideal.²³ Due to the lack of understanding relating to severe mental illness and lack of proper treatment, isolation from society was believed to be the best course of action.²⁴ However, following World War II, the institutionalization model began to raise questions as a result of the successful treatment and reintegration of soldiers experiencing psychiatric symptoms and the development of antipsychotic medications.²⁵ The creation of new therapeutic treatments further supported the proposition that less isolating treatments should replace long-stay psychiatric hospitals.²⁶ It was believed that community-based care for some would be more humane, more therapeutic, and less expensive.²⁷

By the late 1960s, the nation began to focus on deinstitutionalization as a goal for the treatment of the mentally ill.²⁸ The goal of deinstitutionalization was to create community mental health centers that would provide individuals with the proper resources for community integration.²⁹ In 1963, President John F. Kennedy signed the Community Mental Health Centers Act to provide federal funding to

¹⁹ *Id.*

²⁰ Testa, *supra* note 15, at 405.

²¹ *Id.* at 409.

²² *Id.*

²³ *Id.* at 410. There was no federal oversight over the asylums, and little opportunity for therapy or constructive activities for patients.

²⁴ Megan Testa & Sara G. West, *Civil Commitment in the United States*, PSYCHIATRY (EDGEMONT), Oct. 2010, at 30, 38.

²⁵ *Id.*

²⁶ *Id.*

²⁷ H. Richard Lamb & Leona L. Bachrach, *Some Perspective on Deinstitutionalization*, 52 PSYCHIATRIC SERVS. 1039-45, 1040 (Aug. 2001).

²⁸ *Id.* at 1039.

²⁹ *Id.*

create the infrastructure of community-based mental health services and treatment facilities.³⁰ Despite the best of intentions, unfortunately, the program failed because it was never adequately funded.³¹ The effort, however, led to the closure of many state hospitals.³² In some respects, this was good for some individuals who were not being benefited by being institutionalized, but this was not true across the board. Hundreds of thousands of severely mentally ill individuals were discharged from hospitals and returned to their communities.³³ Unfortunately, many were released into their communities with no mental health resources or treatment.³⁴ The number of last resort psychiatric state hospital beds in the United States has fallen to its lowest level on record.³⁵ A 2016 report indicated that there were only 11.7 state hospital beds per 100,000 population, which is a far cry from 337 per 100,000 in 1955.³⁶ Families who had no help in how to handle mentally ill loved ones often turned them away, which led to an increase in homelessness and problematic encounters that frequently resulted in interactions with law enforcement.³⁷

A. *How Jail Became the New Asylum*

The unfortunate reality about mental illness in our society is that it often leads to criminal behavior or violence when left untreated. Mentally ill individuals are more susceptible to encounters with police for a variety of reasons, including financial and social instability coupled with the propensity to have substance

³⁰ *Reflecting on JFK's Legacy of Community-based Care*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (Mar. 18, 2021), <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/jfks-legacy-community-based-care>. The idea behind his plan was to provide federal funding but leave it up to the states to develop their own community mental health facilities that best suit their own individual needs.

³¹ Deanna Pan, *TIMELINE: Deinstitutionalization and Its Consequences*, MOTHER JONES (Apr. 29, 2013), <https://www.motherjones.com/politics/2013/04/timeline-mental-health-america/>.

³² Testa, *supra* note 15, at 410.

³³ *Id.* at 409. The number of occupied state hospital beds has been reduced from 339 per 100,000 population to 21 per 100,000 within 40 years across the United States.

³⁴ *Id.*

³⁵ DORIS A. FULLER, ET AL., TREATMENT ADVOCACY CTR., GOING, GOING, GONE: TRENDS AND CONSEQUENCES OF ELIMINATING STATE PSYCHIATRIC BEDS, 1 (2016).

³⁶ *Id.* There has also been a “17% drop from 2010 bed numbers and left fewer state hospital beds per capita in the United States than at any time since before the nation stopped treating mental illness as a crime in the 1850s.” *Id.*

³⁷ Testa, *supra* note 15, at 410.

abuse issues.³⁸ Approximately fifty percent of individuals suffering from severe mental illness are also diagnosed with substance abuse disorder.³⁹ However, without other adequate response mechanisms, the United States has, in a sense, criminalized mental illness. This criminality of mental illness begins with the fact that police are often the only number people think to call to respond to an emergency mental health situation.⁴⁰ Currently, United States police departments estimate that about seven to ten percent of calls for law enforcement involve individuals in mental health crisis.⁴¹ This is problematic because dispatchers are not properly trained to flag calls that are involving mental illness in order to provide notice to the responding officers.

As a result, mentally ill individuals are vastly overrepresented in the criminal justice system.⁴² In 2017, prisons and jails held more individuals with serious mental illness than the largest state mental hospitals in forty four out of the fifty states.⁴³ This often occurs because mentally ill individuals don't have the resources to hire adequate legal representation, and they are often not able to help in their defense when representation is provided.⁴⁴ Additionally, without access to proper mental health treatment, those who might not have wound up in prison wind up with conditions that may linger or worsen.⁴⁵ This increases the likelihood of future interactions with the justice system.⁴⁶

³⁸ Stephen Eide, *Keeping Mentally Ill Out of Jail: An Innovative Miami-Dade Program Shows the Way.*, CITY J. (Aug. 2018), <https://www.city-journal.org/miami-dade-criminal-mental-health-project>.

³⁹ *Id.* Mentally ill individuals often self-medicate with illegal drugs and alcohol to cope when their symptoms are not under control and to deal with their social isolation.

⁴⁰ Sarah E. Abbott, *Evaluating the Impact of a Jail Diversion Program on Police Officer's Attitudes Toward the Mentally Ill*, 3 (May 1, 2011) (Ph.D. dissertation, Northeastern University) (on file with Northeastern Library Digital Repository Service).

⁴¹ *Id.*

⁴² THE COUNCIL OF STATE GOV'TS, *BEHAVIORAL HEALTH DIVERSION INTERVENTIONS: MOVING FROM INDIVIDUAL PROGRAMS TO A SYSTEM WIDE STRATEGY 2* (2019).

⁴³ John P. Docherty, *Creating New Hope for Mental Illness and the Criminal Justice System*, NAT'L ALL. ON MENTAL ILLNESS (Oct. 20, 2017), <https://www.nami.org/Blogs/NAMI-Blog/October-2017/Creating-New-Hope-for-Mental-Illness-and-the-Crimi>. "In local jails, 64% of people experience symptoms of a mental health condition, which represents over 7 million people. Additionally, 17% of jail inmates experience a serious mental illness." *Id.*

⁴⁴ *Id.*

⁴⁵ Richard Williams, *Addressing Mental Health in the Justice System*, LEGISBRIEFS (Nat'l Conf. of State Legislatures, Washington, DC), Aug. 25, 2017.

⁴⁶ *Id.*

The problem with the lack of mental health treatment in the criminal justice system manifests itself in other ways.⁴⁷ Those with mental illness all too often become repeat offenders.⁴⁸ The almost fifty percent recidivism rate is referred to as the “revolving-door phenomenon,” where individuals with severe mental illness have such a difficulty maintaining stability that they continue to go back and forth between the criminal justice system and the community.⁴⁹

III: POLICE PRACTICES AND THEIR CONTRIBUTION TO MENTAL HEALTH CRISIS.

Not only is the criminal justice system not equipped to handle the amount of mentally ill individuals that cycle through the system, it is often the law enforcement tactics that lead to the initial arrest.⁵⁰ Thereafter, the lack of resources within the criminal justice system leads to the unfortunate high rates of recidivism for mentally ill individuals.⁵¹ Jails and prisons are in no better shape in terms of the training offered to de-escalate situations that involve mentally ill inmates.⁵²

A. Average Police Response and Tactics

Academy training to prepare police officers proper response for individuals with mental illness is widely regarded as insufficient, although it varies from state to state.⁵³ Each state has a Peace Officer Standards and Training (POST) organization that sets the standards and requirements for the states police training and supervises basic academy training for new police officers.⁵⁴ In order to become a police officer in the United States, individuals generally must be over 18 years old, have a high school diploma or GED, and graduate from a credited

⁴⁷ See generally D. Shelton et al., *Psychotropic Medication Adherence in Correctional Facilities: A Review of the Literature*, 17 J. PSYCHIATRIC & MENTAL HEALTH NURSING 603, 608-09 (2010).

⁴⁸ *Id.*

⁴⁹ *Id.* at 604. “Sixty three percent of incarcerated persons with a mental illness were rearrested and thirty three percent were hospitalized within 18 months of their release.” *Id.*

⁵⁰ Abbott, *supra* note 40, at 3.

⁵¹ *Id.*

⁵² See *infra* notes 61-70 and accompanying text.

⁵³ Abbott, *supra* note 40, at 3.

⁵⁴ Dr. Jason Armstrong, *A Letter to the American Public: We Need to Increase the Quantity and Quality of Police training*, POLICE1 (July 9, 2020), <https://www.police1.com/police-training/articles/a-letter-to-the-american-public-we-need-to-increase-the-quantity-and-quality-of-police-training-PEIoRJqWTIG55dqy/>. POST in each state set the minimum hours required for police academy training, with the minimum being approximately 650 hours.

police academy.⁵⁵ The average length of basic law enforcement training in the United States is about 840 hours, or 21 weeks of academy training.⁵⁶ Topics generally include operations, reporting procedures, investigation procedures, fire-arm training, defense tactics, self-improvement, CPR, and legal education.⁵⁷ Unfortunately mental health and crisis intervention training is not a widely trained topic for police academies.

Studies have found that police officers without proper mental health training tend to have negative attitudes towards individuals with mental illness, including the belief the mentally ill are always violent and dangerous and that they need to be housed in a secure setting.⁵⁸ These beliefs starkly mirror the past rationalizations of the institutionalization model, and the preconceived notion often yields that result that the law enforcement officer is trying to protect against.⁵⁹

The other major issue is that traditional police tactics tend to incite fear and further escalate the crisis situation, sometimes resulting in the use of force.⁶⁰ Also, police training tends to overemphasize officer safety and the idea that all individuals are potential threats to their safety.⁶¹ This one-sided mentality leads officers to rush onto scenes with a confrontational attitude, which is very problematic when encountering mentally ill individuals.⁶² Additionally, the use of force is overemphasized for police and without training to deescalate a crisis situation we see police often misusing their force leading to unfortunate deaths of mentally ill individuals.

B. Treatment in The Court System

Courts are the second step in the sequence of events that cause the issues we see with the incarceration and recidivism of those having mental health

⁵⁵ *Id.*

⁵⁶ BRAIN A. REAVES, U.S. DEP'T OF JUST., BUREAU OF JUSTICE STATISTICS, STATE AND LOCAL LAW ENFORCEMENT TRAINING ACADEMIES, 2013, at 4 (2016). This is excluding field training that is required by some states and departments.

⁵⁷ *Id.* at 5.

⁵⁸ *Id.*

⁵⁹ Testa & West, *supra* note 24.

⁶⁰ Amy Watson et al., *Improving Police Response to Persons with Mental Illness: A Multi-level Conceptualization of CIT*, 31 INT'L J.L. PSYCHIATRY 359, 360 (2008).

⁶¹ Seth W. Stoughton, *How Police Training Contributes to Avoidable Deaths*, THE ATLANTIC (Dec. 12, 2014), <https://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>.

⁶² *Id.*

issues.⁶³ Courts, in and of themselves, do not play the same role as law enforcement officers, and yet are also frequently without the resources to be able to do much more than send a mentally ill individual to jail.⁶⁴

Moreover, studies have found that individuals suffering from untreated mental illness tend to be charged with more serious crimes, and therefore face harsher sentences than those without mental illness.⁶⁵ Strict sentencing guidelines limit judicial discretion to take mental illness into consideration and provide proper resources.⁶⁶ Even when judges are able to provide severely mentally ill individuals with community sanctions, the defendants often have trouble consistently complying, leading to additional charges for violating probation.⁶⁷ A significant factor leading to difficulties with compliance stems from the fact that around fifty percent of individuals suffering from severe mental illness are unable to recognize the severity of their disorders.⁶⁸ Additionally, mentally ill individuals' propensity to break rules behind bars lead to extended stays in jail as compared to typical inmates with the same sentence.⁶⁹

C. Lack of Proper Resources in Jails and Prisons

Although jails and prisons were not designed to serve as facilities for mentally ill individuals, it has become one of their primary roles.⁷⁰ Life behind bars is difficult for any individual in facilities that are overcrowded, stressful, and cut off from family and community support, but this struggle is amplified for inmates suffering from mental illness that inhibit their thinking, emotional responses, and ability to cope.⁷¹ To make matters worse, the common sanction for mentally ill inmates breaking rules is isolation in a super maximum security unit

⁶³ NICHOLE WALTERS, NAT'L CTR. FOR STATE COURTS, FAIR JUSTICE FOR PERSONS WITH MENTAL HEALTH ISSUES IMPROVING THE COURTS RESPONSE 1 (2018).

⁶⁴ *Id.* at 6.

⁶⁵ Abbott, *supra* note 40.

⁶⁶ *Id.* at 10. The new sentencing guidelines include mandatory minimum sentences and three-strike laws.

⁶⁷ Am. Pharmacists Ass'n, *Improving Medication Adherence in Patients with Severe Mental Illness*, PHARMACY TODAY, June 2013, at 69, 70.

⁶⁸ Cameron Quanbeck et al., *Mania and the Law in California: Understanding the Criminalization of the Mentally Ill*, 160 AM. J. PSYCHIATRY 1245, 1247-49 (2003).

⁶⁹ Eide, *supra* note 38.

⁷⁰ *Mental Illness, Human Rights, and US Prisons*, HUM. RIGHTS WATCH (Sept. 22, 2009 11:16AM), <https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons>.

⁷¹ *Id.*

for an indefinite amount of time.⁷² The punishment of isolation has caused its own issues. It has been proven that prolonged confinement has the potential to induce various physiological disturbances, which is exacerbated for inmates already suffering from mental illness.⁷³

Jails and prisons are ill-equipped to appropriately provide for the needs of all inmates with mental illness due to the large caseloads, unpleasant facilities, and lack of funding allocated to provide necessary expansions.⁷⁴ A 2004 survey found that twenty-two out of forty state correctional systems reported that they did not have an adequate number of mental health staff.⁷⁵ In 2011, the California Supreme Court ordered the release of over 40,000 prisoners resulting from inadequate medical care, found to be in violation of the Eighth Amendment prohibition against cruel and unusual punishment.⁷⁶ The court found that overcrowding in prisons led to the violations, and that evidence demonstrated that the prison population should be capped at “137.5 percent of design capacity.”⁷⁷ The prison psychologists were managing caseloads far too large to be effective in treating mentally ill inmates, and testimony revealed that they were “doing about 50% of what they should be doing.”⁷⁸ California is not alone in the issue of overcrowding.⁷⁹

Additionally, even if jails and prisons were properly staffed, the primary method of treatment is pharmacotherapy.⁸⁰ However, in order for the medication to be effective, medication adherence must be maintained and patients must take their medication as directed by their medical provider.⁸¹ This is problematic

⁷² *Id.* “A disproportionate number of the prisoners in segregation are mentally ill.” *Id.*

⁷³ *Id.* “According to one federal judge, putting mentally ill prisoners in isolated confinement ‘is the mental equivalent of putting an asthmatic in a place with little air’” *Id.*

⁷⁴ *Id.*

⁷⁵ Cece Hill, *Inmate Mental Health Care*, CORRECTIONS COMPENDIUM, Sept./Oct. 2004, at 12, 15-31.

⁷⁶ *Brown v. Plata*, 563 U.S. 493, 539 (2011).

⁷⁷ *Id.* at 539.

⁷⁸ *Id.* at 518-19. Evidence of significant delays in providing mental health care leading to long periods of untreated segregation was a great concern, especially because it led to incidence of suicide awaiting necessary mental health treatment.

⁷⁹ Niall McCarthy, *The World’s Most Overcrowded Prison System [Infographic]*, FORBES (Jan. 26, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/01/26/the-worlds-most-overcrowded-prison-systems-infographic/?sh=386d082b1372>. Eighteen states reported that they were operating at over 100% capacity.

⁸⁰ Shelton et al., *supra* at note 47, at 604.

⁸¹ *Id.*

because inmates often refuse to take their medication, which often leads to violent behaviors, greater frequency of hospitalization, and longer prison sentences as a result of their bad behavior.⁸² This issue extends beyond the prison walls, because unsuccessful treatment of incarcerated individuals are swiftly reintroduced into communities with little support, and can be a danger to society without proper help.⁸³

IV: PROMISING PRACTICES

The problem with the mentally ill and the criminal justice system has not gone unnoticed. In 2020, more publicity was brought to these issues after the killing of Walter Wallace by a Philadelphia police officer.⁸⁴ In addition to the incident highlighting problems with systemic racism, the incident highlighted what happens when an overly aggressive, poorly trained police officer encounters an individual who suffers from mental health issues.⁸⁵ The incident then brought to light what some municipalities are already doing to prevent the unfortunate situation that caused the death of Walter Wallace.⁸⁶ Various states and municipalities have worked to create promising practices that do their best to address the complex issues raised when law enforcement officers encounter mentally ill individuals.⁸⁷

A. Police Dispatch Mental Health Training

Typically, the first step in the criminal justice process is the initial call to 911 that leads to the police response. Dispatchers are the first point of contact for emergencies, and they gather essential information from the callers and dispatch the appropriate first responding police officers on the scene.⁸⁸ Unfortunately, situations involving individuals in mental crisis are often miss identified as domestic violence or other dangerous situations that require an aggressive police

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Stuart M. Butler, *Innovative Solutions to Address the Mental Health Crisis: Shifting Away From Police as First Responders*, BROOKINGS (Nov. 23, 2020), <https://www.brookings.edu/research/innovative-solutions-to-address-the-mental-health-crisis-shifting-away-from-police-as-first-responders/>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See *infra* notes 71-114 and accompanying text.

⁸⁸ *Position Classification Description: Police Dispatch*, U. OF N.M. (June 28, 2017), <https://jobdescriptions.unm.edu/detail.php?v&id=X2024>.

response.⁸⁹ Training police dispatchers to identify mental health crisis situations that require CIT trained officers in order to dispatch accordingly. Currently, United States police departments estimate that about seven to ten percent of calls for law enforcement involve individuals in mental health crisis.⁹⁰ Properly trained dispatchers have the potential to significantly reduce the number of mentally ill individuals that become involved in the criminal justice system.

The National Alliance of Mental Illness recently proposed a bill, labeled AB 680, to the California legislature to increase police dispatch training requirements.⁹¹ The goal is to ensure that dispatchers become more knowledgeable about crisis identification and mental health identification.⁹² While the bill didn't advance during the legislative session, the Commission on Peace Officer Standards and Training (POST) said they would work with The National Alliance of Mental Illness to create a plan to implement the emergency dispatcher training recommended.⁹³ The plan was to incorporate mental illness and crisis intervention training to all 911 dispatchers as a part of their basic training course curriculum.⁹⁴

B. Crisis Intervention Teams

One of the new practices that some law enforcement entities has adopted are training squad members for crisis intervention teams, which are collaborations between law enforcement and mental health agencies.⁹⁵ In order to successfully divert mentally ill individuals away from jail and towards the rehabilitative mental health treatment they need, it is essential to begin with the initial police interaction. Traditional police tactics involve the assertion of a “command presence.”⁹⁶ Though this approach may initiate compliance with typical offenders,

⁸⁹ Sholtis, *supra* note 1. The 911 call from Ricardo Munoz' sister was misclassified as a “domestic disturbance” even after she explained he was experiencing a mental health episode. This misclassification lead to the responding police officers responding in an aggressive manner with weapons drawn, which ended in Ricardo's death. *Id.*

⁹⁰ Abbott, *supra* note 40.

⁹¹ *News: Mental Health Training for Emergency Dispatchers*, NAT'L ALL. ON MENTAL ILLNESS – CAL., <https://namica.org/blog/news-mental-health-training-for-dispatchers/> (last visited Dec. 7, 2021).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ NATIONAL ALLIANCE ON MENTAL ILLNESS, *supra* note 10.

⁹⁶ Reaves, *supra* note 56, at 5.

it may intensify a mental health crisis situation.⁹⁷ The urgency to create a more productive response results from the public concern of police shootings, of which 1 in 5 involve mentally ill victims.⁹⁸

Crisis Intervention Team programs work to improve police interactions with individuals in mental health crisis by implementing special de-escalation training for law enforcement so they can use those skills to divert individuals experiencing crisis into the appropriate mental health setting as opposed to jail.⁹⁹ Another fundamental aspect of CIT programs is the creation of a collaborative partnership between law enforcement, mental health agencies, emergency services, and families.¹⁰⁰ There are currently over 2,700 communities nationwide that have incorporated some type of CIT program.¹⁰¹

The CIT Model was first developed in Memphis and has spread throughout the country. The “Memphis Model” provides both police officers Crisis intervention training, and a partnership with police officers, mental health providers, and family members.¹⁰² CIT officers receive 40 hours of specialized training in mental health law, psychiatric diagnosis, substance abuse issues, verbal de-escalation techniques, and available local resources for individuals experiencing crisis.¹⁰³ The CIT officers are spread throughout the city and available at all hours. Trained dispatchers call CIT officers to any suspected mental health crisis situation to use their specialized de-escalation training and empathy to calm the situation and determine whether the individual in crisis is in need of additional services.¹⁰⁴

CIT has been recognized as a best practice model by multiple organizations including NAMI (National Alliance on Mental Illness), Department of Justice, and Department of Health and Human Services (SAMHSA).¹⁰⁵ CIT

⁹⁷ Eide, *supra* note 38.

⁹⁸ Kimberly Kindy et al., *Fatal Police Shootings of Mentally Ill People are 39 Percent More Likely to Take Place in Small and Midsized Areas*, THE WASHINGTON POST (Oct. 17, 2020), https://www.washingtonpost.com/national/police-mentally-ill-deaths/2020/10/17/8dd5bcf6-0245-11eb-b7ed-141dd88560ea_story.html.

⁹⁹ NATIONAL ALLIANCE ON MENTAL ILLNESS, *supra* note 10.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² RANDOLF DUPONT ET AL., U. OF MEMPHIS, CRISIS INTERVENTION TEAM: CORE ELEMENTS (2007).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Overview of CIT*, U. OF MEMPHIS, <http://www.cit.memphis.edu/overview.php> (last visited on Dec. 7, 2021).

programs have benefits far beyond diverting mentally ill individuals away from jail and towards the mental health services they need. The officer training provides police officers with tools that increase safety and efficiency.¹⁰⁶ In Memphis, CIT resulted in an 80% reduction of officer injuries that occur during mental crisis calls.¹⁰⁷ Communities have also found that CIT programs reduce the amount of time officers spend on mental health calls, and most significant to some is the cost savings that CIT programs have the potential to produce.¹⁰⁸

C. Pre-Arrest Jail Diversion

Several states and municipalities have found pre-booking jail diversion programs to be a useful practice in reducing the criminalization of mental illness.¹⁰⁹ Pre-arrest diversion programs are an essential component following a positive interaction with a CIT police officer.¹¹⁰ Pre-arrest jail diversion involves the redirection of mentally ill low-level offenders away from jail and toward necessary and productive treatment as opposed to cycling through the criminal justice system.¹¹¹

Harris County, Texas has pioneered The Judge Ed Emmett Mental Health Diversion Center as a pre-booking pathway where law enforcement agencies can divert individuals with mental illness picked up for low-level misdemeanors as an alternative to jail or emergency rooms.¹¹² The Center works to stabilize the mentally ill individuals and as a one-stop shop to connect or reconnect them with necessary services including mental health services, as well as housing needs.¹¹³ Eligibility for this program is determined on a case-by-case basis, but participants must have a documented mental health issue, suspected of a low-level offense, and are not perceived as a threat to society.¹¹⁴

¹⁰⁶ NATIONAL ALLIANCE ON MENTAL ILLNESS, *supra* note 10.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ SUE PFEFFERLE ET AL., U.S. DEP'T OF HEALTH AND HUM. SERVICES, APPROACHES TO EARLY JAIL DIVERSION: COLLABORATIONS AND INNOVATIONS (2019).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² THE HARRIS CTR. FOR MENTAL HEALTH AND IDD, HARRIS COUNTY MENTAL HEALTH JAIL DIVERSION PROGRAM 2 (2018), available at https://www.theharriscenter.org/Portals/0/Service%20Page%20Docs/Jail%20Diversion/Jail_Diversion_Brochure.pdf.

¹¹³ THE HARRIS CTR. FOR MENTAL HEALTH AND IDD, 2019 ANNUAL REPORT 17 (2020).

¹¹⁴ *Id.*

The program is 100% voluntary, and because participants are not charged with anything there is nothing to stop them from leaving.¹¹⁵ However, the early outcomes of the program have demonstrated substantial promise.¹¹⁶ From September 2018- April 2019, there was a fifteen percent reduction in jail bookings compared to the counties baseline, saving the county an estimated \$9.5 million.¹¹⁷ Also, sixty-seven percent of participants had no new jail bookings after their first diversion, indicating that the savings will likely continue to multiply.¹¹⁸

D. Post Booking Jail Diversion

Many states and municipalities have found post booking jail diversion programs to be a useful component in addressing the issue of mentally ill individuals in the criminal justice system.¹¹⁹ There are various reasons why pre-booking jail diversion may not be an option, due to the level or type of offense, or mental illness was not recognized until after booking into jail.¹²⁰ Therefore, it is essential for jurisdictions to have a post booking jail diversion program in order to free up jail beds in crowded jails and provide mentally ill offenders with an environment more conducive to their needs as they await trial.¹²¹

Miami Dade County, Florida began their Criminal Mental Health Project (CMHP) in 2000, which is now one of the most admired diversion initiatives in the country.¹²² Their program provides pro-bono Crisis Intervention Training for police officers throughout the county, embracing the Memphis Model which has led to a decrease in police shootings of mentally ill individuals and a significant minimization of unnecessary arrests.¹²³ In situations where arrest cannot be

¹¹⁵ *Id.*

¹¹⁶ Hope Lane et al., *Diversion is the Most Direct Path for Better Behavioral Health Care in Cuyahoga County*, CTR. FOR COMMUNITY SOLUTIONS (March 16, 2020), <https://www.communitysolutions.com/research/pre-booking-crisis-intervention/>. There was a monthly average of 136 individuals diverted.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Pamela K. Lattimore et al., *A Comparison of Prebooking and Postbooking Diversion Programs for Mentally Ill Substance Using Individuals in the Justice System*, 19 J. CONTEMP. CRIM. JUST. 30, 38 (2003).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Eide, *supra* note 38.

¹²³ *Id.* By 2018 the initiative had provided over 6,000 police officers with CIT. From 2010 to 2017, only 149 arrests were made out of about 83,000 mental-health-related calls to the two largest departments in the county.

avoided CMPH provides post-booking diversion for mentally ill offenders charged with low level offenses upon consent of both the prosecutor and defense attorney.¹²⁴ Upon determining eligibility the CMHP staff will conduct further screening to create a treatment plan to address the participants particular needs, including housing needs, medication, therapy, and substance abuse monitoring.¹²⁵ The staff's close oversight is reported to the judge during frequent court visits, and if all goes well the judge will close the case and drop the initial charges.¹²⁶

The budget is between one and two million dollars, which is provided by the county board of commissioners, state legislature, and Department of Children and Families.¹²⁷ The reasonable budget results from the fact that the CMHP role is to ensure that mentally ill offenders are connected to the counties existing programs and agencies, but is not a service provider itself.¹²⁸

Miami-Dade's CMHP has produced incredibly promising results. Since its inception the program has provided over 7,000 police officers with CIT training, those of whom respond to over 20,000 mental health crisis calls per year.¹²⁹ The number of jail bookings per year has decreased from 118,000 in 2008 to 53,000 in 2019, and the daily population in the county jails dropping from 7,200 to 4,200 inmates.¹³⁰ As a result of the significant decrease in jail population the county was able to completely shut down an entire jail facility, which will save taxpayers \$12 million per year.¹³¹

E. State Legislative Funding

Lack of funding is one of the most common barriers for the implementation of the innovative services described above to address the issues of mental illness in the criminal justice system.¹³² Various states have addressed this problem by passing legislative bills allocating funds to counties and cities in order

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* If participants do not comply, they receive standard treatment and are adjudicated the same as ordinary defendants.

¹²⁷ *Id.* Supplemental Social Security and Medicaid benefits are also instrumental.

¹²⁸ *Id.*

¹²⁹ KATHERINE WARBURTON & STEPHEN STAHI, *DECRIMINALIZING MENTAL ILLNESS* 97, 100 (2021).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² DEP'T OF HEALTH AND HUM. SERVICES, *TARGETED CAPACITY EXPANSION (TCE) GRANTS FOR JAIL DIVERSION* (2002).

to implement essential services to create better outcomes for mentally ill individuals.¹³³

Texas provides a great example of proactive legislative action. Senate Bill 1849 was put into place in 2017 to address circumstances that led to the death of Sandra Bland, a woman found dead in the county jail days after being arrested during a routine traffic stop, who was later revealed to have suffered from depression and had a history of mental health issues.¹³⁴ The Bill mandates law enforcement officers to complete a 40-hour educational and training program in de-escalation and crisis intervention techniques.¹³⁵ The act also mandates that county jails divert people with mental health and substance abuse issues toward treatment when possible, and requires that individuals seeking employment as a jailer complete an eight hour mental health course in order to obtain their required license.¹³⁶

Texas state legislature has also provided funding for innovative mental health jail diversion services. In 2017, Texas House Bill 13 offered \$27.5 million to fund select mental health programs through a matching grant program to support community mental health programs providing services and treatment to individuals experiencing mental illness.¹³⁷ Additionally, Texas Senate Bill 292 created a \$37.5 million grant matching program designed to reduce arrest, incarceration, and recidivism among people with mental illness.¹³⁸ The two

¹³³ See COLO. REV. STAT. ANN. § 18-1.3-101.5 (West, Westlaw current through the end of the First Regular Session of the 73rd General Assembly (2021)). Providing annual grants to support mental health diversion pilot programs. Criminal Justice Efficiency and Safety Act of 2017, 2017 Arkansas Laws Act 423 (West) (S.B. 136). Arkansas allocated \$6.4 million to provide CIT training to law enforcement officers.

¹³⁴ Johnathan Silver, *Texas Gov. Abbott Signs “Sandra Bland Act” into Law*, THE TEXAS TRIBUNE (June 15, 2017), <https://www.texastribune.org/2017/06/15/texas-gov-greg-abbott-signs-sandra-bland-act-law/>.

¹³⁵ Tierra Smith, *Five Years Later: The Death of Sandra Bland Continues to Demand Police Reform From Local and State Officials Across Texas*, CLICK 2 HOUSTON (July 13, 2020), <https://www.click2houston.com/news/local/2020/07/13/five-years-later-the-death-of-sandra-bland-continues-to-demand-police-reform-from-local-and-state-officials-across-texas/>. The act initially included provisions to tackle “racial profiling during traffic stops, consent search and consulting for police officers who profile drivers.” However, those provisions were stripped from the bill to focus on mental health and de-escalation training. *Id.*

¹³⁶ *SB 1849 “Sandra Bland Act” Implementation Timeline*, TEX. ASS’N OF COUNTIES (Nov. 2, 2018), <https://www.county.org/News/County-Issues/2018/November/SB-1849-Sandra-Bland-Act>.

¹³⁷ *House Bill 13: Community Mental Health Grant Program*, TEX. HEALTH AND HUM. SERVS., <https://hhs.texas.gov/doing-business-hhs/grants/behavioral-health-services/house-bill-13-community-mental-health-grant-program> (last visited on Dec. 7, 2021). “The grant will fund community programs to expand treatment, promote recovery and improve quality of life for people with mental illness.” *Id.*

¹³⁸ *SB 292: Mental Health Grant Program for Justice Involved Individuals*, TEX. HEALTH AND HUM. SERVS., <https://hhs.texas.gov/doing-business-hhs/grants/behavioral-health-services/sb-292->

legislative acts in conjunction made the successful Judge Ed Emmett Center possible.

V: OHIO'S CURRENT MENTAL HEALTH RESPONSE IN CJS

Ohio Revised Code Section 5122.01 defines mental illness as “a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.”¹³⁹ The prevalence of mental illness in Ohio is consistent with the national levels with about 20% of adult individuals over eighteen years old experiencing mental health issues.¹⁴⁰ According to SAMHSA, four point seven percent of adults in Ohio suffer from serious mental health conditions including schizophrenia, bipolar disorder, and major depression.¹⁴¹ Ohio is ranked 26 out of the 50 states for providing access to mental health services.¹⁴² Ohio has made great strides in providing mentally ill offenders with resources throughout the criminal justice process.¹⁴³ However, there is a significant need for additional state funding and programming to improve services provided to reduce the number of mentally ill individuals from entering the criminal justice system in the first place.

A. Current Police Training in Ohio

In order to become a police officer in Ohio, individuals must be a U.S. citizen, be a high school graduate or have a GED, be at least 21 years old, and have no felony convictions.¹⁴⁴

mental-health-grant-program-justice-involved-individuals (last visited on Dec. 7, 2021). The grant matching program is used for community-based community collaborations to reduce “recidivism by decreasing the frequency of arrest and incarceration among people with mental illness.” *Id.*

¹³⁹ OHIO REV. CODE ANN. § 5122.01 (West, Westlaw current through File 59 of the 134th General Assembly (2021-2022)).

¹⁴⁰ COLUMBUS PUB. HEALTH, MENTAL HEALTH DATA BRIEF: FRANKLIN COUNTY, OHIO 5 (2020); *Mental Health Resources in Ohio*, RTOR, <https://www.rtor.org/directory/mental-health-resources-in-ohio/> (last visited Dec. 7, 2021).

¹⁴¹ RTOR, *supra* note 140. “Only 47% of adults with mental illness in Ohio receive any form of treatment from either the public system or private providers. The remaining 53% receive no mental health treatment.” *Id.*

¹⁴² *Id.*

¹⁴³ *See infra* notes 162-166.

¹⁴⁴ *How to Become a Police Officer in Ohio*, HOW TO BECOME A POLICE OFFICER, <https://www.how-to-become-a-police-officer.com/states/ohio/> (last visited Dec. 7, 2021).

Applicants must graduate from an approved basic training academy, which requires passing both physical and written exams.¹⁴⁵ The Ohio Police Officer Training Commission is in charge of making recommendations to the Attorney General regarding police officer training, curriculum, and establishes annual continuing professional training (CPT) requirements.¹⁴⁶

Currently, academy curriculum must require 737 hours of training, though local academies may require additional hours.¹⁴⁷ Ohio basic training curriculum must include training in administration, legal, human relations, firearms, driving, investigation, traffic, patrol, civil disorders, subject control, first aid, physical conditioning, and homeland security.¹⁴⁸ Ohio also requires that academies train at least one hour of crisis intervention training, but the training is focused on the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape.¹⁴⁹

Ohio cannot require annual training for police officers, unless the Ohio Legislature allocates money to fund the training.¹⁵⁰ This hasn't happened since 2017, when the state provided funding to train select officers how to interact with individuals suffering from a mental health crisis.¹⁵¹ The executive director of the Ohio Police Officer Training Commission recently released a memo to all law enforcement administrators informing that there is no funding available for 2021 for police officer annual training, and therefore no state required CPT.¹⁵²

¹⁴⁵ *How To Become a Peace Officer in Ohio*, OHIO ATT'Y GEN., <https://www.ohioattorneygeneral.gov/How-to-Become-a-Peace-Officer-in-Ohio> (last visited Dec. 7, 2021).

¹⁴⁶ OHIO REV. CODE ANN. § 109.71 (West, Westlaw current through File 59 of the 134th General Assembly (2021-2022)); *Ohio Police Officer Training Commission*, OHIO ATT'Y GEN., <https://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/Ohio-Peace-Officer-Training-Commission> (last visited Dec. 7, 2021).

¹⁴⁷ *Id.*

¹⁴⁸ OHIO REV. CODE ANN. § 109:2-1-16 (West, Westlaw current through File 59 of the 134th General Assembly (2021-2022)).

¹⁴⁹ *Id.* § 109:2-1-13. "Statutorily Mandated Training."

¹⁵⁰ James Balmert, *Ohio Requires Fewer Training Hours for Police Officers Than Barbers*, CINCINNATI ENQUIRER (Jan. 11, 2020), <https://www.cincinnati.com/story/news/2020/06/11/ohio-requires-fewer-hours-training-police-officers-than-barbers-could-change/5318372002/>.

¹⁵¹ *Id.*

¹⁵² Memorandum from Dwight A. Holcomb, Executive Director, Ohio Police Officer Training Academy, to Law Enforcement Administrators (Nov. 23, 2020) (on file with Ohio Attorney General) available at <https://www.ohioattorneygeneral.gov/getattachment/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/CPT-Hours-for-2021-Memorandum.pdf.aspx?lang=en-US>.

However, it is encouraged that local municipalities individually fund and require their officers to attend continued police training.¹⁵³

B. Problems with Current Police Training in Ohio

It has long been argued that there is a clear need for additional and updated police training in the state of Ohio.¹⁵⁴ Notably, the state of Ohio requires new police officers to complete half the amount of training hours than required for licensed cosmetologists.¹⁵⁵ Ohio also does not statutorily require police academies train new officers on proper police response to individuals in a mental health crisis.¹⁵⁶ This is alarming due to the disproportionately high volume of police encounters mentally-ill individuals have because inappropriate police response puts both the mentally-ill individual and the police officer in great danger.¹⁵⁷ The resources to properly train officers in CIT techniques are available, but the states failure to allocate money to fund such training makes a mandatory implementation less attainable.¹⁵⁸

It is also very problematic that the State of Ohio does not require Continued Police Training due to a lack of funding.¹⁵⁹ Law enforcement careers can span several decades through changing times, so the fact that it is possible for an officer to only have their original 737 hours of basic training to rely on is very problematic.¹⁶⁰ Relying on cities to fully fund continued training also creates

¹⁵³ *Id.*

¹⁵⁴ Balmert, *supra* note 150.

¹⁵⁵ *Id.* The state of Ohio requires police officers only receive 737 hours of training to become an officer, compared to a minimum of 1,500 hours required to become licensed cosmetologists and 1,800 hours for barbers.

¹⁵⁶ OHIO REV. CODE ANN. § 109:2-1-13 (West, Westlaw current through File 59 of the 134th General Assembly (2021-2022)).

¹⁵⁷ DORIS A. FULLER ET AL., TREATMENT ADVOCACY CTR., OVERLOOKED IN THE UNDER-COUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS 1 (2015). A minimum of 1 in 4 fatal police encounters involves an individual with severe mental illness, and the risk is 16 times greater for a severely mentally ill individual to be killed during a police encounter.

¹⁵⁸ Lane et al., *supra* note 116. The Ohio Criminal Justice Coordinating Center of Excellence (CJCCoE), in collaboration with the Ohio Department of Mental Health and Addiction Services and the Summit County Alcohol, Drug and Mental Health (ADAMHS) board has helped bring CIT to communities across the state.

¹⁵⁹ Sean McDonnell, *Ohio Attorney General Promotes More Police Training, State Licensure Program*, AKRON BEACON J. (Oct. 4, 2020, 10:05 AM), <https://www.beaconjournal.com/story/news/2020/10/04/ohio-attorney-generals-police-reforms-find-common-ground/3572213001/>.

¹⁶⁰ *Id.*

inconsistency in officer training and response, due to disparities in city finances across the state.¹⁶¹ Additionally, with no statewide database to track police training hours compliance with training recommendations is both difficult to achieve and there is no way to track compliance.¹⁶² This lack of proper training is one of the biggest issues because with a lack of proper training it is easy for police officers to become complacent and continue using problematic tactics while responding to mental health crisis, which have been proven to be problematic and unsuccessful.¹⁶³

C. Post Booking Diversion Programs

Ohio has succeeded in Governor Mike DeWine's goal of expanding access to specialty docket courts for criminal justice involving individuals struggling with mental illness.¹⁶⁴ Ohio has actually been nationally recognized as a leader in the establishment of mental health specialty courts.¹⁶⁵ Impressively, the state of Ohio currently has 244 specialty courts across the state.¹⁶⁶

For example, Cuyahoga County has a Mental Health and Developmental Disabilities (MHDD) Court that works to connect severely mentally ill individuals with necessary resources in order to get them out of jail pre-trial.¹⁶⁷ In order to be eligible for the program defendants must have a confirmed severe mental illness with a psychotic feature and not have a pending case apart from the new offense.¹⁶⁸ The MHDD court is a collaborative effort between the courts and

¹⁶¹ *Id.*

¹⁶² John Caniglia & Rachel Dissell, *Ohio Law Enforcement Annual Training 'Critical'; Reimbursements Inconsistent, Tracking Questionable*, CLEVELAND.COM (Feb. 16, 2020), <https://www.cleveland.com/news/2020/02/ohio-law-enforcement-annual-training-critical-reimbursements-inconsistent-tracking-questionable.html>.

¹⁶³ Stoughton, *supra* note 62.

¹⁶⁴ OHIO MENTAL HEALTH & ADDICTION SERVS., 2020 ANNUAL REPORT (2021).

¹⁶⁵ Judge Elinore Marsh Stomer, *What Is a Mental Health Court?* OHIO STATE BAR ASS'N (Nov. 16, 2020), <https://www.ohioabar.org/public-resources/commonly-asked-law-questions-results/courts-and-lawyers/what-is-a-mental-health-court/#:~:text=Ohio%20has%20been%20recognized%20nationally,specialty%20courts%20around%20the%20state>.

¹⁶⁶ *Id.*

¹⁶⁷ *Mental Health and Developmental Disabilities (MHDD) Court*, CUYAHOGA CNTY. COMMON PLEAS CT., <https://cp.cuyahogacounty.us/court-resources/specialty-courts/mhdd-mental-health-and-developmental-disabilities-court/> (last visited Dec. 7, 2021).

¹⁶⁸ CUYAHOGA CNTY. CT. R. 30.1.

community agencies.¹⁶⁹ Their mission is “to promote early identification of defendants with severe mental health /developmental disabilities in order to promote coordination and cooperation among law enforcement, jails, community treatment providers, attorneys and the courts for defendants during the legal process and achieve outcomes that both protect society and support the mental health care and disability needs of the defendant.”¹⁷⁰

Mental health courts typically require that participants appear regularly in court in order to gauge their process, and the judge plays an active role in encouraging participants through the process.¹⁷¹ Case managers are also crucial players in a successful mental health court, as they work to stabilize the participant and connect them with necessary community resources, which could include housing, mental health care, or addiction services.¹⁷² These programs typically last about two years, and participants who successfully complete the program graduate with the skills necessary to remain healthy in the community.¹⁷³

D. Ohio Department of Mental Health and Addiction Services

The Ohio Department of Mental Health and Addiction Services (OhioMHAS) oversees a statewide mental health and alcohol service system.¹⁷⁴ Their mission is to “provide statewide leadership of a high-quality mental health and addiction prevention, treatment and recovery system that is effective and valued by all Ohioans.”¹⁷⁵ The Department consists of fifty-one county-based Boards and hundreds of community behavioral health agencies, that work together to coordinate the public health and addiction recovery and treatment in Ohio.¹⁷⁶

¹⁶⁹ *Id.* The MHDD Court has five judges, two Probation Supervisors, two pre-trial officers, and 13 highly trained post-conviction officers.

¹⁷⁰ *Id.*

¹⁷¹ Stomer, *supra* note 166.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *OhioMHAS Mission, Vision and Values*, OHIO DEP’T OF MENTAL HEALTH AND ADDICTION SERVS., <https://mha.ohio.gov/wps/portal/gov/mha/about-us/mission-vision-and-values/mission-vision-and-values> (last visited Dec. 7, 2021).

¹⁷⁵ *Id.*

¹⁷⁶ *Board Membership*, OHIO DEP’T OF MENTAL HEALTH AND ADDICTION SERVS., <https://mha.ohio.gov/wps/portal/gov/mha/about-us/rules-and-regulations/statutory-requirements/board-membership> (last visited Dec. 7, 2021). “Forty-seven of these county-based boards are known as Alcohol, Drug Addiction and Mental Health Services (ADAMHS) boards, three are Community Mental Health (CMH) boards and three are Alcohol and Drug Addiction Services (ADAS) boards.” *Id.*

The Ohio Revised Code grants rule-making authority to the Ohio Department of Mental Health & Addiction Services to adopt, amend, or rescind rules that establish standards for community mental health agencies, private psychiatric inpatient hospitals, client rights and grievance processes.¹⁷⁷ The OhioMHAS also provides the Criminal Justice and Behavioral Health Linkage Grants to encourage counties to create relationships between the behavioral health and criminal justice systems.¹⁷⁸

VI: RECOMMENDATIONS TO IMPROVE OHIO'S MENTAL HEALTH RESPONSE IN CJS

It is evident that there is an imminent need for Ohio to reform criminal justice response to mentally ill individuals. It would be a grave task to create all of the necessary programming that is needed to address the failures of the criminal justice system for mentally ill individuals. Fortunately, the various states and municipalities noted above have formulated, implemented, and shown great promise in their results.¹⁷⁹ Therefore, Ohio should work to follow the successful models outlined above once funding is locked down.

A. Obtaining Required Funding

The programs described above are often widely supported and regarded as a necessary next step in criminal justice reform, but these programs are expensive, and states rarely have excess funding to implement new programs. As evidenced by Ohio's inability to fund continuing police training, it is evident that Ohio doesn't currently have the funding necessary to implement the proffered programs described below.¹⁸⁰ However, though implementation will require a large upfront investment, the diversion will save the state a significant money in the long run.¹⁸¹ Not only would the programs save money by reducing the recidivism of mentally ill individuals that didn't have necessary support, the police training in de-

¹⁷⁷ *Rules*, OHIO DEP'T OF MENTAL HEALTH AND ADDICTION SERVS., <https://mha.ohio.gov/wps/portal/gov/mha/rules-and-regulations/rules/welcome> (last visited Dec. 7, 2021).

¹⁷⁸ *Criminal Justice and Behavioral Health Linkage Grants*, OHIO DEP'T OF MENTAL HEALTH AND ADDICTION SERVS., <https://mha.ohio.gov/wps/portal/gov/mha/community-partners/criminal-justice/jail-programming/criminal-justice-and-bh-linkage-grants> (last visited Dec. 7, 2021).

¹⁷⁹ *See supra* notes 83-130.

¹⁸⁰ Holcomb, *supra* note 152. There is no state funding available to fund the recommended annual police officer training in Ohio for 2021.

¹⁸¹ McDonnell, *supra* note 159.

escalation may reduce large settlements the state has to pay for fatal interactions with law enforcement.¹⁸²

The state of Ohio should implement a grant matching program similar to Texas House Bill 13, which matched all non-state grants to fund select mental health programs up to \$27.5 million.¹⁸³ There are many federal grant programs that fund projects that address law enforcement response to individuals with mental illness and jail diversion programs.¹⁸⁴ The Department of Justice and The U.S. Department of Health and Human Services (HHS) frequently offer federal grants that offer large sums of money for states and municipalities to implement programs similar to what is proposed here.¹⁸⁵ The National Institute of Justice recently provided grants of up to \$3 million for programs “enhancing strategies for officer interaction with individuals presenting with mental illness.”¹⁸⁶ A grant matching program would not only encourage municipalities to apply for private and federal grants, it would also be an easier initiative for the legislature to pass.

B. Police Training and Response

Police training reform is no new idea, and it is especially evident and topical following the horrific events leading to George Floyd’s death.¹⁸⁷ The disturbing images that circulated picturing the detainment and ultimately death of Mr. Floyd exemplify the atrocities that are bound to happen without properly trained police officers and major reform.¹⁸⁸ This of course was not the first time police employ inappropriate tactics that lead to avoidable deaths, but the horrific

¹⁸² *Id.*

¹⁸³ TEXAS HEALTH AND HUMAN SERVICES, *supra* note 137. House Bill 13.

¹⁸⁴ Therese Matthews, *Grants for Police Mental Health Outreach Programs*, POLICE1 (May 13, 2019), <https://www.police1.com/police-grants/articles/grants-for-police-mental-health-outreach-programs-4edCbvmO1udNRinJ/>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Evan Hill et al., *How George Floyd was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>. On May 25, 2020, George Floyd was killed by a Minneapolis police officer during an arrest following an allegation that he was using a counterfeit \$20 bill. One of four responding police officers knelt on Mr. Floyd’s neck for at least 8 minutes and 46 seconds, ignoring Floyd’s continuous cries that he could not breath and persisted after Mr. Floyd was unconscious and showed no signs of life. *Id.*

¹⁸⁸ Ronald Tyler & Susan A. Luban, *Police Use of Force, Training, and a Way Forward After the Death of George Floyd*, STANFORD L. SCH. (June 4, 2020), <https://law.stanford.edu/2020/06/04/police-use-of-force-training-and-a-way-forward-after-the-death-of-george-floyd/>.

images lead to protests across the United States demanding police reform now.¹⁸⁹ At least one fourth of police encounters involve an individual with severe mental illness, and they are 16 times more likely to be killed during a police encounter.¹⁹⁰ With Ohio police officers properly trained with how to properly respond to mentally ill individuals in crisis will make a significant impact not only on those interactions, but every police interaction.

Once funding is obtained, the state of Ohio should properly allocate the funds required to meet the minimum 25 hours of training recommended by The Ohio Police Officer Training Commission.¹⁹¹ Positive police interactions begin with proper police training at the academy. Introduction to crisis intervention training from the outset of a police officer's career would be beneficial to avoid creating misinformed bias against mentally ill individuals and learn how to approach the situation correctly.¹⁹² This would also be cost-effective because the police trainee pays for academy training, unlike the continued police training that the state must pay for to mandate.¹⁹³ Therefore, The Ohio Police Officer Training Commission should mandate that police academies add crisis intervention training to their curriculum.¹⁹⁴

Ohio should also provide the resources and funding needed for cities to implement Crisis Intervention Teams following the Memphis Model CIT training to create a partnership with police officers, mental health providers, and family members.¹⁹⁵ Police departments should build strong relations with their respective ADAHM board to stay up to date on services available for mentally ill individuals they encounter.¹⁹⁶ This model will require the state to provide police officers with the Memphis Models specific 40-hour Crisis intervention training.¹⁹⁷

¹⁸⁹ Meredith Deliso, *Timeline: The Impact of George Floyd's Death in Minneapolis and Beyond*, ABC NEWS (March 12, 2021), <https://abcnews.go.com/US/timeline-impact-george-floyds-death-minneapolis/story?id=70999322>; Hill et al., *supra* note 187. It is also disturbing is that the officer was performing a "carotic restraint," which is applying pressure to vascular veins to temporarily cut off blood flow to the brain rendering someone unconscious.

¹⁹⁰ Fuller et al., *supra* note 157.

¹⁹¹ Balmert, *supra* note 150.

¹⁹² NATIONAL ALLIANCE ON MENTAL ILLNESS, *supra* note 10.

¹⁹³ Balmert, *supra* note 150; *What to Expect in The Police Academy*, POLICEAPP (Mar. 26, 2019), <https://www.policeapp.com/Blog/blogView.asp?BlogID=14#:~:text=If%20you%20attend%20the%20police,different%20types%20of%20police%20academies%3F>.

¹⁹⁴ Balmert, *supra* note 150.

¹⁹⁵ DUPONT ET AL., *supra* note 102.

¹⁹⁶ *Supra*, note 119.

¹⁹⁷ *Id.*

Though Memphis only required select police officers to receive the training, it would be beneficial for every police officer in Ohio to receive at least some crisis intervention training because not all calls are properly flagged as a mental health crisis by dispatch.¹⁹⁸ With that being said, there is also a need for the implementation of training for dispatch workers to recognize signs of a mental health crisis and properly inform the officers.

Ohio should work to implement the plan proposed in California Bill AB 680 and increase police dispatch training.¹⁹⁹ It should be a requirement that 911 dispatchers in the state take a training course to make them more knowledgeable about identifying crisis situation and mental health concerns.²⁰⁰ Since the bill failed to advance in the California state legislature, Ohio could be the first state to implement such an essential part of keeping mentally ill individuals out of the criminal justice system.²⁰¹

Ohio would also benefit by implementing a state-wide Mental Health database. The database would allow police officers to search to determine if an offender has documented mental illness and what it is. It would also be beneficial for all state mental health agencies to share information about patients, in order see the patient's history and avoid conducting duplicative testing, which would end up saving agencies valuable time and money.

C. Implementation of Pre-Arrest Diversion Programs

The State of Ohio should also work to obtain funding to create pre-arrest diversion programs and open pre-arrest diversion centers across the state. The availability of pre-arrest jail diversion centers is essential for mentally ill individuals that are in crisis and pose a threat to themselves. The facilities should be modeled after the successful Judge Ed Emmet Mental Health Diversion Center in Harris County, Texas.²⁰² The centers will work as an alternative to jail and the limited psychiatric hospital resources, stabilizing mentally ill individuals and connecting them with follow up services.²⁰³ The goal should be for Ohio to create diversion centers in all 88 counties, but due to the expense of creating the centers that will likely take a long time to accomplish.²⁰⁴ Therefore, until that is possible,

¹⁹⁸ UNIVERSITY OF MEMPHIS, *supra* note 105. The Memphis Model only requires that select officers have undertaken crisis intervention training, so long as there is a trained officer on duty at all times.

¹⁹⁹ NATIONAL ALLIANCE ON MENTAL ILLNESS – CALIFORNIA, *supra* note 91.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² THE HARRIS CENTER FOR MENTAL HEALTH AND IDD, *supra* note 113.

²⁰³ *Id.*

²⁰⁴ Lane et al., *supra* note 116.

counties that successfully build diversion centers should share their resources with surrounding counties. Not only would these centers produce better outcomes for mentally ill individuals, they will also lead to significant cost savings.²⁰⁵

VII: CONCLUSION

The state of Ohio would benefit in many ways if the recommendations listed above were put into fruition. The time to implement these programs is now. There is a societal outcry to make changes in law enforcement, due to fatalities resulting from police officer racial bias and improper mental health training.²⁰⁶ Mentally ill individuals have been ignored for too long and allowed to get stuck in the revolving door of the criminal justice system. The argument used for deinstitutionalization in the 20th century and the goal to create community mental health centers that would provide individuals with the proper resources for community integration are just as relevant today.²⁰⁷

Treating the untreated is a proven practice for reducing the disproportionate volume of mentally ill individuals stuck in the criminal justice system and reducing deadly police encounters involving mentally ill individuals.²⁰⁸ Police reform is essential, but police cannot divert people from the justice system if there is nothing to divert them to.²⁰⁹ Therefore, state grant matching programs should be implemented to assist in the implementation of community mental health providers that will provide the necessary resources to mentally ill individuals.²¹⁰ The creation of cross system collaborations between police, courts, and community mental health agencies will help each one of them work more efficiently in the restoration of mentally ill individuals in the community.²¹¹ By implementing the proffered recommendations, the State of Ohio has the opportunity to successfully deinstitutionalize mentally ill individuals and allow them to live the happy and productive lives they deserve.

²⁰⁵ *Id.* The Judge Ed Emmet Center saved Harris County, Texas nine point five million dollars in a matter of seven months as a result of reduced recidivism of mentally ill individuals taken to the center as opposed to jail.

²⁰⁶ *Supra*, note 70.

²⁰⁷ *Supra*, note 17.

²⁰⁸ Fuller et al., *supra* note 157.

²⁰⁹ Pfefferle et al., *supra* at note 109, at 15.

²¹⁰ TEXAS HEALTH AND HUMAN SERVICES, *supra* note 138.

²¹¹ Pfefferle et al., *supra* at note 109, at 15.