POLICING AND BEHAVIORAL HEALTH CONDITIONS

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When police officers address public safety, they increasingly encounter individuals with behavioral health care needs. We do not ordinarily think of police as frontline mental health care workers; they are not trained as treatment providers. And yet, many of the people that police routinely detain, question, search, and arrest are acutely in need of such behavioral health interventions.

In the decades following the deinstitutionalization of large numbers of psychiatric patients in the 1960s and 1970s throughout the United States, "the police have become frontline professionals who manage these persons when they are in crisis."[1] Law enforcement is the portal by which many adults with behavioral health conditions enter both the criminal legal system and the civil commitment system. Police officers are described as "street corner psychiatrists" and "de facto mental health providers."[2] The unprecedented growth in mass incarceration[3] in the United States, in tandem with deinstitutionalization and the lack of community-based services and low-income housing, have contributed to what is arguably a public health crisis. Large and disproportionate numbers of adults with serious mental illnesses that impair thought and dysregulate mood, often with co-occurring substance use disorders, are detained in our nation's largest city jails, under conditions that make recovery difficult.[4]

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1. *See* H. Richard Lamb, Linda E. Weinberger & Walter J. DeCuir, Jr., *The Police and Mental Health*, 53 PSYCHIATRIC SERVS. 1266, 1266 (2002) (discussing the importance of police training in recognizing mental illness due to the increasing overlap between the criminal justice system and the mental health system).

2. *See generally* Linda A. Teplin & Nancy S. Pruett, *Police as Streetcorner Psychiatrist: Managing the Mentally Ill*, 15 INT'L J.L. & PSYCH. 139 (1992).

3. *See* COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT'L RSCH. COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 2 (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014) (analyzing the unprecedented rise in incarceration rates in the U.S. over the last four decades).

4. *See* JENNIFER BRONSON & MARCUS BERZOFSKY, U.S. DEPT. OF JUST., INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS AND JAIL INMATES, 2011–12, 1 (2017), https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf [https://perma.cc/NUU9-S8HD] (finding in a jail

For millions of Americans who live with a serious mental illness or substance use disorder, frequent encounters with police can be stressful and traumatic. For some groups in society, notably young Black men, repeated police stops over time can induce serious psychological distress and even psychotic experiences.[5] And an increasing number of police-citizen encounters end in tragedy, especially those involving people with behavioral health disorders. Since 2015, an estimated 1,400 people with a serious mental illness died in police shootings—comprising one in five of the total people killed by police in the United States.[6] At the same time, police officers themselves face significant mental health challenges in their work and daily lives; about twice as many officers die by suicide each year as are killed in the line of duty.[7]

Deploying the police routinely as the response to persons experiencing a behavioral health crisis is neither effective social policy nor popular with the public. A recent poll found that eighty-six percent of adults in the United States believe that a person experiencing a mental health or suicide crisis should receive a mental health response, not a police response; only thirteen percent favor a police response as the better option.[8] Also, large majorities of the public support rehabilitative alternatives to arrest or incarceration for persons with mental illness.[9]

In response to this growing call for new approaches, many jurisdictions have implemented alternative policing strategies that focus on accessing treatment for persons with behavioral health needs rather than simply taking them into custody. These police reforms take a variety of approaches. For example, they can involve training police to respond to behavioral health crises, providing mechanisms for treatment alternatives to an arrest, or diversionary programs that

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inmate survey that 26% of inmates reported experiences that met the threshold for serious psychological distress and 44% had been told in the past that they had a mental disorder).

5. *See* Jeffrey W. Swanson, *Alternative Perspectives on Police Encounters and Psychotic Experiences*, 43 SCHIZOPHRENIA BULL. 946, 948 (2017) (showing that in a recent community survey, 45% of those who reported being harmed by police also reported psychotic experiences).

6. *Fatal Force*, WASH. POST, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/ [https://perma.cc/V94S-6BZE] (last visited Sept. 23, 2022).

7. MIRIAM HEYMAN, JEFF DILL & ROBERT DOUGLAS, RUDERMAN FAMILY FOUND., THE RUDERMAN WHITE PAPER ON MENTAL HEALTH AND SUICIDE OF FIRST RESPONDERS 27 (2018), https://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/TrainingDocs/First%20Responder%20White%20Paper_Final%20(2).pdf [https://perma.cc/C9E6-N872].

8. NAT'L ALL. ON MENTAL ILLNESS, NAMI 988 CRISIS RESPONSE RESEARCH 5 (2022), https://www.ipsos.com/en-us/news-polls/americans-unhappy-mental-health-united-states-061622 [https://perma.cc/X9QV-EADR].

9. *See* Matthew Clarke, *Polls Show People Favor Rehabilitation Over Incarceration*, PRISON LEGAL NEWS (Nov. 6, 2018), https://www.prisonlegalnews.org/news/2018/nov/6/polls-show-people-favor-rehabilitation-over-incarceration [https://perma.cc/52Y4-K6HC] (showing via polls that a large majority of voters across the political spectrum agree that the purpose of the criminal justice system should be rehabilitation). *See also* Robert Blizzard, *Public Opinion Strategies*, POLITICO (Jan. 25, 2018), https://www.politico.com/f/?id=00000161-2ccc-da2c-a963-efff82be0001 [https://perma.cc/8R6C-6DHE] ("By an 85%–13% margin, voters agree that the main goal of our criminal justice system should be rehabilitating people to become productive, law-abiding citizens.").

refer persons to treatment after an arrest or conviction.[10] Still other reforms seek to largely replace the police role in behavioral health crises with responses by non-law enforcement social workers or health care professionals.

There are various opportunities to reduce law enforcement interactions with people in behavioral health crises,[11] but challenging questions for law and social policy arise at the intersection of policing and behavioral health. There is mixed evidence concerning the success of some of the new reform approaches to policing persons with behavioral health needs,[12] and many difficult underlying questions remain unanswered. For example: What is the appropriate institutional role of law enforcement in responding to incidents involving people who are experiencing a mental health or addiction crisis, but who may not pose an immediate threat to public safety? How do police officers manage their multiple, and sometimes conflicting, roles in these encounters? Should policing be thoroughly reformed (and perhaps reimagined) as part of our national reckoning with racial equity and police violence marked by the names of Eric Garner, Freddie Gray, Philando Castile, Breonna Taylor, and George Floyd? What needs to be done to prevent police-involved tragedies, not only the high-profile fatal shootings of vulnerable citizens, but the quotidian suicides of police officers in the shadows? And what are the most effective and promising interventions, policies, and legal tools to improve outcomes for people with mental illnesses who encounter law enforcement? Where do we see the most forward-looking models of training and support for police officers in this area? And how well do these approaches work, particularly in times of severe fiscal constraint? How should they best be organized, financed, and implemented?

A growing body of scholarship examines, not just the regulation of policing, but the relationship between policing and behavioral health. This special issue explores that relationship, bringing together top thinkers on the topic from a range of disciplinary perspectives including mental health law, psychology and psychiatry, public policy, criminology, sociology, legal epidemiology, and public health law. Policing and behavioral health is a complex, multifaceted problem suited to interdisciplinary thinking.

In this special issue, Amy Watson and Taleed El-Sabawi describe the expansion of the police role over the past fifty years into the arena of responding

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10. *See, e.g.*, INT'L ASS'N OF CHIEFS OF POLICE & UNIV. OF CINCINNATI CTR. FOR POLICE RSCH. & POL'Y, ASSESSING THE IMPACT OF LAW ENFORCEMENT ASSISTED DIVERSION (LEAD): A REVIEW OF RESEARCH ii (2020), https://www.theiacp.org/sites/default/files/IDD/Review%20of%20LEAD%20Evaluations.pdf [https://perma.cc/3QKT-84RK] (discussing a modern police reform initiative in Seattle, Washington known as the "Law Enforcement Assisted Diversion Model").

11. KATHERINE BECKETT ET AL., UNIV. OF WASH., JUSTCARE: THE DEVELOPMENT AND IMPACT OF A MULTI-FACETED COLLECTIVE IMPACT MODEL 6–7 (2021), https://coleadteam.org/wp-content/uploads/2021/07/JustCARE-Report_7-12-21.pdf [https://perma.cc/9XD3-RC3K].

12. Eric Westervelt, *Mental Health and Police Violence: How Crisis Intervention Teams Are Failing*, NAT'L PUB. RADIO (Sept. 18, 2020), https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing [https://perma.cc/AYC7-Z24C].

to difficult situations in the community involving people with serious mental illness in crisis.[13] They discuss driving factors, race inequities, and the need to rebalance roles. Tragic police shootings of people experiencing mental health crises, along with recognition of the over-representation of people with serious mental illnesses in the criminal legal system, have inspired research and policy efforts in recent decades. As a result, substantial resources have focused on improving law enforcement's ability to safely respond to people experiencing mental health crises in their communities, diverting people with serious mental illnesses away from the criminal legal system, but also providing mental-health-focused programming within that system.

Reform of police responses to behavioral health crises has become a central focus for law enforcement policy, given the growing recognition of the complex problems surrounding people with serious mental illnesses across the criminal legal continuum. This includes the alarming frequency of fatal police shootings of persons with mental illness in police encounters. The authors critically examine how policing became central to mental health crisis response and the management of people with serious mental illnesses in the community. The authors argue that it is critical that understanding comes through the lens of intersectionality, as the negative impacts of policing are disproportionately borne by communities of color.

While many scholars cite the failure to adequately develop comprehensive community mental health services as a cause of overreliance on crisis care, Watson and El-Sabawi explore the multitude of factors that have led to the current reliance on police in this role. The authors foresee a continuing role for police in behavioral health crisis response when public safety concerns are present; as a result, police officers must still be prepared to respond safely and effectively. However, the authors argue that it is time to shift attention and resources to building the capacity of the behavioral health system to address the needs of people with mental illnesses and especially those experiencing mental health crises.

In their article, Jennifer Wood and Evan Anderson write about the "triage" of first responders to mental-health-related 911 events.[14] As they detail, Philadelphia recently embarked on a comprehensive plan to restructure how it responds to incidents involving potential mental health crises in the community. The plan includes a continuum of first-response options, ranging from police-led approaches to alternative models that include mental health specialists. A flagship effort initiated in the City of Philadelphia is the 911 Triage and Crisis Intervention Response Team (CIRT) Initiative. The triage component includes specialized training and the deployment of a new approach for sorting calls based

    13. Amy C. Watson & Taleed El-Sabawi, *Expansion of the Police Role in Responding to Mental Health Crises Over the Past Fifty Years: Driving Factors, Race Inequities, and the Need to Rebalance Roles*, 86 LAW & CONTEMP. PROBS., no. 1, 2023, at 1.
    14. Jennifer Wood & Evan Anderson, *Triaging Mental Health Emergencies: Lessons from Philadelphia*, 86 LAW & CONTEMP. PROBS., no. 1, 2023, at 29.

on the need for potential mental health responses. The CIRT component is a co-response team pairing a police officer with a clinician to address mental health-related calls. These teams are deployed directly through 911 dispatch and as a secondary response upon request by officers in the field.

Based on findings from a mixed method evaluation of this effort, the article examines the inherent challenges in triaging calls for both mental distress and risks of violence. Expansion and sustainability of CIRT is dependent on a call screening system that can predict both "true positives" (where CIRT is appropriately deployed to calls) and "true negatives" (where CIRT is appropriately not deployed). Their findings to date illustrate the difficulty in avoiding both "false positives" and "false negatives." Underlying the use of crisis response alternatives that are less reliant on police is the assumption that the least police-centered model is preferable when appropriate. For this approach to work, telecommunications professionals on 911 and crisis lines must accurately identify and convey safety risks. Their article elaborates on the problems of false positives and false negatives as issues that may derail wider efforts to de-center the police as first responders to acute mental distress.

Meret Hofer and Jennifer Rineer explore occupational stressors among police, detailing their adverse effects on police mental health, police practice, and how they affect interactions between the public and police.[15] They review the impressive growth of scholarship focusing on the need for criminal justice practices to be informed by evidence-based behavioral health approaches. That work has largely focused on incorporating evidence-based practices in responding to vulnerable groups, such as individuals with mental illness. Another focus of this scholarship is the poor mental health status of many criminal justice workers themselves and the need to improve their own well-being as well as the performance and functioning of criminal justice agencies. The authors review major occupational stressors among police, their effects on the mental health status of police, and how it affects interactions with the public. They draw on literatures from clinical, community, organizational, and occupational health psychology to posit that these inordinate levels of occupational stressors may be affecting the policing profession and interactions with the community in unexpected and important ways. They conclude by describing practical implications for organizations, policymakers, legal stakeholders, and approaches to ameliorating the negative effects of occupational stress on police.

Allison Gilbert and colleagues discuss their evaluation of Law Enforcement Assisted Diversion (also referred to as 'Let Everyone Advance with Dignity') programs (LEAD) in North Carolina, highlighting its implementation successes and challenges.[16] These challenges include police buy-in to the program, restrictive program eligibility, equitable referrals to the program, and difficulties

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15. Meret S. Hofer and Jennifer Rineer, *In Consideration of the Behavioral Health of Police*, 86 LAW & CONTEMP. PROBS., no. 1, 2023, at 55.

16. Allison Gilbert et al., *North Carolina Law Enforcement Assisted Diversion (LEAD): Considerations for Optimizing Eligibility and Referral*, 86 LAW & CONTEMP. PROBS., no. 1, 2023, at 73.

in the process of direct referrals to the program or "warm hand-offs." LEAD was the nation's first pre-arrest, pre-booking strategy to address disruptive or unlawful conduct stemming from substance use and poverty. LEAD is intended to help communities develop a new, non-punitive pathway to community-based care for people who commit, or are at high risk of committing, law violations related to their behavioral health challenges or related poverty. Instead of prosecution and incarceration, LEAD provides long-term, community-based intensive case management based on harm reduction principles. While LEAD has proved successful in achieving positive outcomes for program participants, LEAD programs across the country have encountered challenges in scaling up the number of participants the program could serve, often due to barriers related to referrals. Common program challenges included: logistically complicated referral processes for police officers;[17] lack of knowledge among officers about the goals of LEAD and the details of the referral process;[18] overly-restrictive eligibility requirements; and lack of buy-in among officers to the values and principles underlying the LEAD model.[19]

North Carolina was the first state in the Southeastern United States to implement LEAD widely. As leaders in this part of the country in adopting alternatives to traditional law enforcement responses to illicit drug use, much of the North Carolina context is distinct from programs developed in large metropolitan areas. Understanding how LEAD operates in this context helps illuminate which features of those social contexts influence the challenges and successes of the program.

Katherine Beckett notes in her article that public awareness of the many human, social, and fiscal costs associated with exceptional U.S. penal practices has grown in recent decades.[20] Many critics of current practices have called for the expansion of diversion in order to reduce mass incarceration and mass criminalization. Initiatives that involve diversion are designed to respond to legal violations in ways that re-route people away from the criminal legal system, thereby reducing harm, while also addressing the underlying issues that fuel crime and disorder. Her article provides an overview of three types of diversion: court-based diversion models utilized by therapeutic courts, pre-booking diversion approaches enacted by law enforcement officers, and community referral processes. The analysis is informed by the secondary literature and data derived from an ongoing case study of LEAD programs, which are used to illustrate central issues and dilemmas associated with each type of diversion.

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17. Paul J. Joudrey et al., *Law Enforcement Assisted Diversion: Qualitative Evaluation of Barriers and Facilitators of Program Implementation*, 129 J. SUBSTANCE ABUSE TREATMENT, 2021, at 1, 6.

18. Erica Jovanna Magaña, Dina Perrone & Aili Malm, *A Process Evaluation of San Francisco's Law Enforcement Assisted Diversion Program*, 33 CRIM. JUST. POL'Y REV. 148, 148 (2022).

19. *Id.*

20. Katherine Beckett, *Diversion And/As Decarceration*, 86 LAW & CONTEMP. PROBS., no. 1, 2023, at 103.

Beckett contends that court-based diversion does not represent a meaningful shift away from the carceral state. However, she argues that initiatives that allow for both officer-initiated, pre-booking diversion and community referral processes do maximize the impact of diversion by re-routing people most at risk of experiencing criminal legal harm away from the criminal legal system and helping to build community-based approaches to public safety. Officer-led pre-booking diversion has been shown to produce many benefits, including reduced criminal legal system involvement and improved client well-being. Innovations in such models include the advent of community referral processes without reliance on the police.

An alternative approach would involve working to reverse mass criminalization and effectuate true decriminalization, thereby rendering diversion moot. The legalization of marijuana is a prime example of this approach. In many cities, the de facto criminalization of poverty has become, at the very least, contested. Protesters routinely seek to block encampment sweeps and other practices that reflect criminalization of extreme poverty and homelessness. However, until the larger structural and political context is altered, diversion remains a necessary, albeit imperfect, method for reducing the scope of the criminal legal system and the harm it causes while enhancing access to care and support for the most vulnerable and marginalized.

Still, a flexible approach that allows program administrators to shift in response to changing political circumstances appears to be the best that diversion can accomplish given existing structural conditions and capacity constraints. The existence of the community referral process means that program administrators can find a way around law enforcement reluctance to "clear" certain people for referral to LEAD. And over time, the continued development and utilization of community referral processes may help to generate support for addressing the broader structural conditions that fuel emergency response calls and the over-reliance on jails as the de facto response to human misery.

Important common themes emerge from these contributions. While LEAD and related approaches have resulted in a new focus on diversion by police, increasingly, efforts have turned towards alternatives to police responses. Yet, these alternatives face their own challenges. They may exacerbate or fail to reduce racial disparities. They may be unevenly implemented. They may fail to connect individuals with adequate healthcare. One deeper challenge includes the lack of community behavioral health resources that might provide a way to prevent the need for emergency police response in the first instance. The lack of those community resources becomes cyclical, as police responses and detention in jails further negatively affect health, public safety, employment, and housing.[21] As the policing and behavioral health fields struggle with addressing systemic racism, a tangible first step is to commit to minimize law enforcement

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21.   *See, e.g.*, CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, LAURA & JOHN ARNOLD FOUND., THE HIDDEN COSTS OF PRETRIAL DETENTION 22 (2013) (noting that longer stays in pre-trial detention increase the risk of new criminal activity).

involvement in mental health crises and involuntary commitment. When law enforcement officers are the first responders in a large proportion of mental health crises, something has gone awry.

To be concrete: a key performance measure for state and local mental health authorities should be the proportion of mental health crises that rely on law enforcement. Tools to leverage this shift are being utilized at both the state and federal level, providing an opportunity for significant improvements in mental health crisis responses. However, there is a risk that we will develop non-police responses that primarily benefit privileged communities while continuing to send police to underprivileged and minority communities based on deeply entrenched biases. It is critical that we monitor these efforts. Otherwise, we will increase rather than decrease race inequities.

More fundamentally, while improving the policing of behavioral health may offer an important opportunity to reduce reliance on incarceration in the United States, continuing to deploy police as mental health crisis responders also plays a role in driving mass incarceration. Fundamental change is needed, and these authors have suggested a range of alternatives and methods to hold reform efforts accountable and measure their promise and their failings. Without deeper, comprehensive change, as a society, we will continue to police behavioral health in a counterproductive way that harms both health and public safety.