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## Criminal Justice Interventions for Individuals with Mental Health Disabilities: A Systematic Literature Review


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# Criminal Justice Interventions for Individuals with Mental Health Disabilities: A Systematic Literature Review

## Abstract

In the criminal law, with few exceptions, for a finding of guilt, the physical act and the state of mind to commit the offense must be present at the time of the commission of the offense. People with mental disabilities often lack the state of mind required to commit the offense for which they are eventually charged for and or convicted. This paper examines the effectiveness of some past and present criminal justice system interventions that addresses the mental health disabilities of criminal offenders pre-adjudicative proceedings. A systematic review of the literature was used to examine past and present criminal justice system crisis interventions either by itself or in collaboration with other mental health agencies. The literature review shows no strong body of evidence to support that interventions have been very effective but some progress has been made in certain areas. There is a need to continue to make improvements to present criminal justice interventions to meet up with the developments in the mental health arena. Further inquiry and research in this area is suggested.

## Keywords

criminal law, mental health, crisis-intervention-training

## **Criminal Justice Interventions for Individuals with Mental Health Disabilities: A Systematic Literature Review**

### **Background**

In criminal law, aside from strict liability crimes, for a crime to be committed, there must be a physical act (*actus reus*) causing the crime, and a guilty state of mind (*mens rea*) to commit the crime. The foregoing is not a very nuanced definition of *actus reus* and *mens rea*, but it suffices for the purpose of this paper.

Law enforcement officers are often an offender's first contact with the criminal justice system. In the past, there were no institutional safeguards to ensure that the issue of mental health was adequately exhausted from the time of first contact by an individual with law enforcement officers to incarceration, in determining criminal culpability. In general, law enforcement education does not emphasize training on mental health as it does on probable cause considerations under the penal code. Therefore, it is not unusual that the mental state of the individual has no primacy during an arrest. In cases where an individual's mental state was impacted by mental illness during the commission of the crime, the interest of justice did not appear to have been served because a critical element for the pronouncement of guilt was missing from the burden of proof.

Based on the literature, a gap was identified between mental illness and the criminal justice system which still has not been bridged even though it was acknowledged that some improvements have been made [1, 2, 3]. Police contacts with the citizenry appears also to be changing across the United States with police departments making concerted efforts to train their officers in identifying issues of mental health during the process of arrest, arraignment, and

incarceration. However, extensive work still needs to be done to change the narrative and ensure uniform standardization and practice [4].

According to the National Institute of Health, mental health illness diagnoses in the U.S. grew from about sixty diagnosed mental illnesses in the 1970s to about three hundred diagnosed mental disorders today. The criminal justice system has not been proactive in keeping up with the changes in the mental health arena or in preparing law enforcement to manage people with mental health illnesses [5]. Other than a long and chequered history in many US jurisdictions recognizing insanity as a defense capable of negating mental state, the legal system has been slow to extrapolate the lack of a guilty mind to other crimes. Several reasons may be adduced for this gap in legal development. Whatever the reasons may be, there is a sense that the lacuna has not promoted the tenets of justice, especially for those individuals who may have been impacted.

In the wake of George Floyd's murder in May 2020 by Derek Chauvin, a Minnesota police officer, law enforcement arrest methods were again at the fore of the news circle. There have been numerous cases of law enforcement arrest tactics gone awry many years pre-George Floyd murder, and a few more after. In some of the reported cases, diminished capacity of the individual/lack of the requisite mental state due to mental illness was often the norm. This paper examines the impact of the criminal justice system on individuals with mental health disabilities. It takes a critical look at whether past and present interventions by state actors provide enough safeguards for individuals with mental illness pre-criminal justice proceedings. The requirement of a guilty mind as a cardinal element of a crime is juxtaposed with the failure of the United States criminal justice system to acknowledge the same in the determination of guilt for most criminal offenses. The paper by way of a systematic review examines the literature on some of

the past and present interventions that have been implemented to address the issues faced by individuals with mental illness in their encounters with the criminal justice system.

## **Methods**

This systematic literature review adopted the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) guidelines [6]. A Research Ethics Board (IRB) approval was obtained even though unnecessary because no human subject was used in this literature review.

## **Sources**

Four electronic databases were searched:

1. PubMed – a search for journal articles, biomedical journals, books, and dissertations in the social sciences, behavioral sciences, and health sciences.
2. Psych-Info – an index of behavioral and social sciences journals was searched.
3. Google Scholar – an index of journal articles, books, dissertations, editorials, research work, and conference proceedings in medical sciences, health sciences, law, humanities, social and behavioral sciences was searched.
4. Google Scholar (Case text) – an index of US court decisions was searched.

Across all the databases, the search was limited to peer-reviewed articles published in the English language and limited to the last five years.

## **Study Selection**

A 3-stage screening process was used for the inclusion/ exclusion to identify articles passing the criteria.

- Stage 1 – screening of article titles
- Stage 2 – screening of abstract screening, and whether relevant

- Stage 3 – content screening

All articles that passed through the 3 stages and met the criteria were further hand-searched for eligibility and reviewed for the quality of evidence and for reliability.

### **Eligibility criteria**

Studies that addressed the following criteria were eligible for inclusion in this review, see Fig. 1:

- State of mind of the offender at the commission of the offense.
- The role of the police in responding to people who are experiencing mental health crises.
- The effectiveness of the Police Crisis Intervention Training program.
- The economic benefits of mental health intervention programs in criminal justice.
- The effectiveness of mental health courts.
- The benefit of collaboration between the criminal justice system and mental health services agencies.

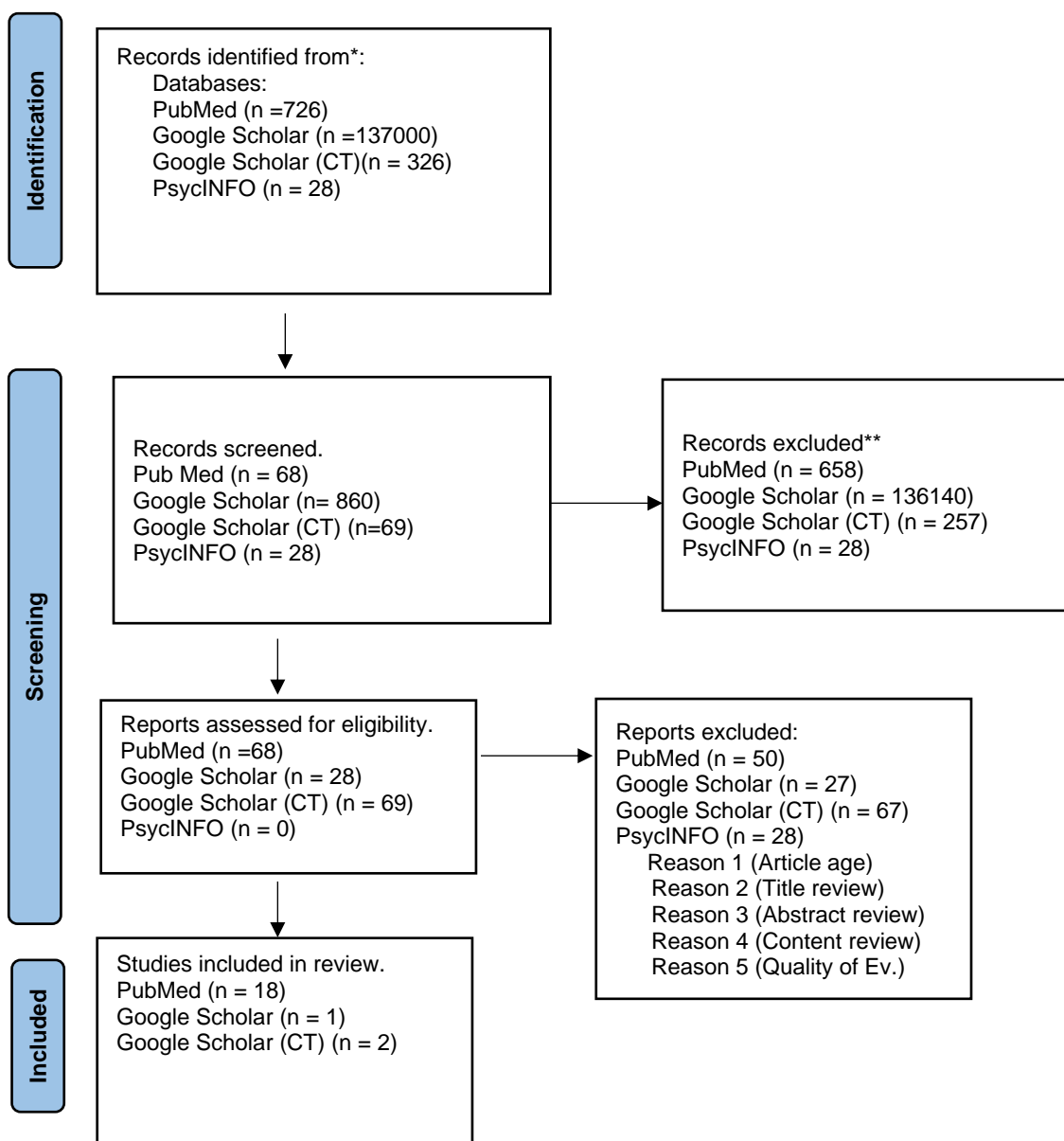
**Keywords search:** Mental health, mental illness, criminalization, the criminal justice system, law enforcement officers, police officers, crisis intervention training.

**PubMed:** Paper title and keyword terms were utilized for a database search. 726 articles were retrieved. Using inclusion-exclusion criteria for the age of articles, and peer-reviewed, reduced the number of articles to 68. Of the identified 68 peer-reviewed articles, an abstract, content review, and quality of evidence review were done which further reduced the number of articles to 18 articles that met the criteria for inclusion.

**Google Scholar:** A paper title and keyword terms search retrieved 1,370,000 articles from the database. Using inclusion/exclusion criteria of 5 years restriction, and peer-reviewed articles limited the articles to 860. This was further streamlined to 28. A title, abstract, and content review reduced the selected article to only 1, which was included in the paper.

**Google Scholar (Case text):** A search of the database was done using the keyword terms *actus reus* and *mens rea*. This resulted in 326 case law decisions. When mental health was added to the keyword terms, that database brought up only 69 relevant case law decisions in the last five years. Upon further review of the cases, only 2 legal texts/decisions met the specific criteria for inclusion in the paper.

**Figure 1: Systematic Review Selection Flowchart**



***PsycINFO***: A search of this database revealed 28 peer-reviewed journals, but none met the five-year minimum limitation criteria.

References were made to relevant government health services websites such as the United States Department of Health and Human Services website.

## **Results**

In the past two decades, various Crisis Intervention Training (CIT) for law enforcement were introduced at the local, state, and federal levels. The goal of CIT is to “reduce the risk of serious injury or death during an emergency interaction between persons with mental illness and law enforcement officers” [7]. The Memphis model of CIT formulated in 1988 following the shooting to death of Dewayne Robinson by Memphis police officers provided a template for CIT use across various police agencies nationwide. Currently, some form of CIT program has been adopted by most if not all police departments in the United States [9, 10]. Some of the interventions employed by law enforcement had various levels of success [7], and others are not supported by evidence of making an impact [8]. There are limited and mixed reviews of the effectiveness of CIT programs [10, 7].

Another program that has been found in the literature to have some reported benefit outcomes is the pre-diversion program. The pre-diversion program diverts individuals from the criminal justice system to mental health treatment. However, in a systematic review of the literature on the effectiveness of pre-diversion practices, Dewa et al. concluded that “the current evidence for the effectiveness of police-based pre-booking diversion programs in reducing arrest [i.e., reducing criminalization] of people with mental illness is limited.” The authors report there is moderate evidence that pre-diversion programs increase linkage to mental health services.[8]



Another intervention is the establishment of mental health courts to help criminal defendants whose mental illness significantly contributed to their commission of the offenses charged. A systematic review of 20 studies suggests that mental health courts help to reduce recidivism rates, but the effect on police contact is less clear. [11]

A 2023 study by Potter recommends having a centralized surveillance agency for behavioral health. The agency will oversee screening, assessment, and diagnosis using electronic tools to develop and standardize data. With the hope that such a system would provide a first step “surveillance approach to determining the prevalence of any type of behavioral health issues that burden the population that passes through the criminal justice system. [4]

Kamin et al., believe that promoting mental health and criminal justice collaboration is key to addressing some concerns about intervention effectiveness but concede that such system-level collaboration can be particularly challenging because mental health and criminal justice providers have different values, methods, and goals. [12] Parker et al. agrees that inter-agency collaboration can be a helpful tool for criminal justice and mental health practitioners which ultimately inure to the benefit of the criminal defendant with mental illness. [13] Knapp & Wong, looked at the economic benefit of mental health interventions and reported that there is “some evidence of cost-effectiveness . . . . However, there are challenges in turning economic evidence on mental health interventions in criminal justice into policy changes and improved practice. [However] large gaps remain.” [3]

## **Discussion**

In *Rehaif v. United States*, the United States Supreme Court held that “The Criminal Law generally seeks to punish conscious wrongdoing.” [14] Adumbrating, the court held that when interpreting a criminal statute, the courts start from a longstanding presumption that “Congress

intends to require a defendant to possess a culpable mental state” in the commission of the crime. In *Ruan v. United States*, the United States Supreme Court described “The culpable mental state, known as scienter [as] the degree of knowledge necessary to make a person criminally responsible for his or her acts.” [15]

The right to self-defense, a defense of insanity, and the defense of lack of free will in the United States and most Western societies are well defined and documented in homicide cases. There are also imperfect defenses recognized by the courts and codified by statute that may reduce liability where a criminal defendant acts honestly and reasonably. This right to imperfect self-defense is available in some jurisdictions such as Canada, the United Kingdom, Australia, France, and Norway, and allows for reduced culpability in cases such as murder where the person's belief is honest but unreasonable because of mental illness. [16, 17, 2, 18, 19] However, this imperfect defense based on unreasonable belief due to mental illness is disallowed in all jurisdictions in the USA.[2]

It is generally accepted that mental illness is not a defense to most offenses under US Criminal law. However, the current scientific understanding of mental illness and its potential effect on free will is contrary to the current position of several United States laws that require a specific mental state to commit a crime.

An individual’s contact with the criminal justice system invariably starts with an encounter with the police who often function as gatekeepers. In furtherance of their duties as police officers, they “intervene with people who may be living with mental illness.... By design police agencies were not established to screen for mental illnesses...” [20] Compton et al., report that “individuals with serious mental illness are overrepresented in all facets of the legal system.” [21] There is an acknowledgment that currently, the US legal system does not guarantee taking

into consideration a criminal defendant's mental state from the defendant's initial contact with law enforcement agents up to the point of sentencing. Compton et al. concluded that there is a "need for policy and program development in our legal system" [22]. However, this is not to suggest that there have been no improvements.

Over the years, proactive steps have been taken at all levels of the US government - local, state, and federal – to address some of the challenges faced by mentally ill persons/individuals who encounter law enforcement. The literature on mental illness and the criminal justice system tilts unfavorably on the shortcomings of the criminal justice system, and understandably so. However, Woods et al., address the peculiar challenges faced by law enforcement in the dispensation of their duties. They report that "officers often [find] people in crisis as having gone off meds, .....co-occurring issues such as family level frustration, community level deficiencies in health and social resources to address long term unmet needs." [23, 24, 25] Woods et al. in a follow-up article surmised that "decision makers along a criminal legal continuum [policy makers, policy implementer, lawmakers, and judicial interpretations] are critical to illuminating the dynamic inter-related contexts that facilitate and frustrate attempts to address defendants' mental health needs while balancing considerations of public safety." [20] Pope et al., examined how decision-makers articulate unique visions at different stages of the criminal justice system. Criminal justice agencies differ in their approach even though there is a shared commitment to reducing system contact among people with mental illness. Yet, there are limitations to current approaches.[1]

### **Study Limitations**

Several limitations of our study must be acknowledged. First, we utilized only four search engines that were readily accessible: PubMed, Google Scholar, Google Scholar (Case

Text), and PsycINFO. The study inclusion criteria focused on studies addressing the following issues: The state of mind of the offender at the commission of the offense, the role of the police in responding to people who are experiencing mental health crises, the effectiveness of the Police Crisis Intervention Training program, the effectiveness of mental health courts, the benefit of collaboration between mental health services and the criminal justice system, and the economic benefits of mental health intervention programs in criminal justice. Other studies may have partly investigated the state of mind of the offender, or minority subgroups as part of their research and thus were not part of our analysis. Additionally, our search may not have employed the most optimal keywords to generate an ideal sampling of papers. Our search included keywords “Mental health,” “mental illness,” “criminalization,” “the criminal justice system,” “law enforcement officers,” “police officers,” and “crisis intervention training.” Furthermore, validated checklists were not used to assess study quality which may result in selection bias.

## **Conclusion**

This systematic review of the literature shows a substantial gap between the development of the criminal justice system compared to the scientific advances in the field of mental health. The criminal justice system seems to have been slow in bridging this gap due to a lack of proactive changes and institutionalized deficiencies. In the past two decades, novel approaches have been adopted by various levels and agencies of government to address some of these gaps. Some changes have come about because of public policy or public outcry over event/s that shock the conscience, such as unjustified police killings in cases such as George Floyd. There is evidence to support some improvements in law enforcement efforts, but much still needs to be done. This literature review shows that there is not yet a strong body of evidence to conclude that current intervention programs nationwide are very effective, even though some progress seems

to have been made. There is a need for continued monitoring and further inquiry in this area of study.

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